The Solicitors' Journal
and Weekly Reporter
(*ESTABLISHED IN* 1857.)
LONDON, JANUARY 27, 1917.
ANNUAL SUBSCRIPTION, WHICH MUST BE PAID IN ADVANCE:
£1 6s.; by Post, £1 8s.; Foreign, £1 10s. 4d.
HALF-YEARLY AND QUARTERLY SUBSCRIPTIONS IN PROPORTION.

*** The Editor cannot undertake to return rejected contributions, and copies should be kept of all articles sent by writers who are not on the regular staff of the JOURNAL.

All letters intended for publication must be authenticated by the name of the writer.

GENERAL HEADINGS

Cases Reported this Week.

Current Topics.

The New Ministries and Secretaries Act, 1916.

ONE OF the most important measures of the recent session is the New Ministries and Secretaries Act, 1916, by which the Ministries of Labour, Food, and Shipping have been created, and also the Air Board, the President of which is to be deemed to be a Minister and the Air Board itself a Ministry established under the Act. The Ministry of Labour is established permanently, and there are transferred to it the powers and duties of the Board of Trade under the statutes scheduled to the Act; and other powers and duties of the Board of Trade or of any other Government department or authority, relating to labour or industry, may be transferred to it by Order in Council. The scheduled statutes are the Conciliation Act, 1896, the Labour Exchanges Act, 1909, the Trade Boards Acts, 1909, the National Insurance (Unemployment) Acts, 1911 to 1916, and Part I. of the Munitions of War Act, 1915, in each case as amended by any other Act. Under an Order in Council, which we printed last week (*ante*, p. 206), this transfer took effect on the 10th inst. The other Ministries are temporary only, and come to an end on the termination of a period of twelve months after the conclusion of the war, or such earlier date as may be fixed by Order in Council (section 13).

The Functions of the New Ministries.

THE TEMPORARY nature of the last three Ministries is involved in the reasons assigned for their creation. Under section 3 the Minister of Food is created, with the title of Food Controller, "for the purpose of economising and maintaining the food supply of the country during the present war." Under section 5 the Minister of Shipping is created, with the title of Shipping Controller, "for the purpose of organizing and maintaining the supply of shipping in the national interests in connection with the present war." And under section 7 the Air Board is created "for the purpose of organizing and maintaining the supply of aircraft in the national interest in connection with the present war." The particular powers and duties of these temporary Ministries are to depend on Orders in Council and Defence of the Realm Regulations. The object of all these new creations is matter of common knowledge.

They are intended partly to relieve the Board of Trade of a portion of its functions—functions which have increased rapidly during the war—and partly to place certain departments of national work of urgent importance each in the hands of a man of practical knowledge, who can devote his whole attention to it. With the activities of Lord DEVONPORT as Food Controller everyone is already familiar, and Sir JOSEPH MACLAY, the Shipping Controller, and Lord COWDRAY, who has, we believe, been appointed President of the Air Board, will become equally familiar in their more special duties. The reasons for the appointment of a Minister of Labour are of a more general nature. The project for such an appointment dates back some twenty years before the war, and Mr. JOHN HODGE and his successors are likely to play an important part in the political developments of the future. But, of course, all this means a startling increase of official activity, and how this is to be held in check is a problem which will become acute. Another question which is likely to raise very serious questions in the immediate future is the maintenance of Parliamentary control over the Ministerial departments and, in particular, over the now attenuated Cabinet.

Trustees and Treasury Deposit Schemes.

THE GOVERNMENT War Obligations Act, 1916 (6 & 7 Geo. 5, c. 70), which was passed on 22nd December, contains an important provision with respect to participation by trustees in Treasury Deposit Schemes. It will be remembered that section 2 (1) of the Government War Obligations Act, 1915 (5 & 6 Geo. 5, c. 96), passed on 23rd December, 1915, authorized the deposit of securities in pursuance of any such scheme, "notwithstanding that these securities are subject to any trust, and notwithstanding any provisions of the trust, whether arising by deed, Act of Parliament, or otherwise"; but, of course, any such deposit by trustees would require the concurrence of all the trustees. Section 2 (1) of the recent Act is intended to give the like power where the trustees are not unanimous. If there are two trustees, the deposit may be made with the concurrence of one trustee and the persons entitled to the income of the securities; if there are more than two trustees, it may be made with the concurrence of one half or more of the trustees and the persons entitled to income. The section refers in sub-section 3 to the earlier enactment, and defines "securities" as including for the purpose of that enactment "stocks, shares, and other securities," and the earlier provision obviously remains in force, so that a sole trustee can deposit the securities under that provision. But while the earlier Act only authorized the deposit of trust securities or the giving of such securities in exchange for Government securities, the present statute provides also that they may be sold to the Treasury, and this power of sale will exist, apparently, only where there are two or more trustees. Sub-section (2) of section 2 of the recent Act provides for notices in lieu of distringas being served on the Treasury. But all this seems to be superseded by the compulsory order issued since it was written.

President Wilson and a League of Peace.

A BRIEF note will suffice to place on record President WILSON'S latest move in the direction of a European peace—his address last Monday to the Senate of the United States. It calls attention to the difference in the Replies from the Central and the Allied Powers to his Note of 18th December. That of the Central Powers made no suggestion at all as to terms of peace; that of the Allied Powers, though general, yet gave certain specific conditions of a satisfactory settlement. But Mr. WILSON sees in all peace discussions an assumption that peace must be followed by definite arrangements for the prevention of war in the future; and the main question for him is on what terms the United States can take part in this arrangement. He proposes that the people of the United States shall "add their authority and their power to the authority and force of other nations to guarantee peace and justice throughout the world," and he attempts to state the conditions on which the United States Government would feel justified in asking the people to approve its "solemn and final adherence to a league of peace." The main condition is that the treaties and agreements which bring the war to an end shall create a peace which is worth guaranteeing and preserving. The terms of this peace the United States will have no voice in settling, but it will be able to judge whether they shall be made lasting by the guarantee of a universal covenant. And then follows a clear statement that the League of Peace must have force behind it:—

> It will be absolutely necessary that a force be created as a guarantor of the permanency of the settlement so much greater than the force of any nation now engaged or any alliance hitherto formed or projected, that no nation, no probable combination of nations, could face or withstand it. If the peace presently to be made is to endure, it must be a peace made secure by the organized major force of mankind.

The Conditions of a World Guarantee.

THE PEACE which Mr. WILSON thinks will be worth the guarantee is "a peace without victory." Naturally, this phrase has given a shock to the Allies, but the idea behind the phrase is more important than the phrase itself. Taken in its context, it probably means that the end of the war shall not involve the extinction of the national life of any people, and this, the statesmen of the Allies agree, is no part of their aims. But it is by no means clear that the President means to rule out a conclusion of the war which shall involve the crushing of Germany as a distinctive military power; and this, we take it, is the immediate object of the Allies. Against Germany, brought back into a civilian state of mind and habit, there is no enmity. Again, Mr. WILSON'S claim for the freedom of the seas is one which must be construed in connection with the general idea of his speech. This country, we believe, has always stood for the freedom of the seas, and is doing its best to maintain that freedom now, though the task is difficult enough, in view of the German submarine warfare. We may note that, apart from the tendency to misunderstand the phrase, "peace without victory," as Mr. WILSON intended it, the reception of the speech in this country appears to have been sympathetic. If it cannot be said to bring peace definitely nearer, it at least prolongs the consideration of the means by which the ruinous losses in life and treasure which this year promises can be averted.

The Shortening of Settlements.

WE NOTICED at the time (60 SOLICITORS' JOURNAL 650) the article in the *Law Quarterly Review* for July, in which the late Sir HOWARD ELPHINSTONE made suggestions for the shortening of settlements and wills. We described his scheme as one for the extension of statutory shorthand. Settlements and wills contain numerous common form clauses, and the suggestion was that these should be implied in settlements by the short direction that the property brought into settlement should be held on the "statutory trusts of a husband's fortune," or on "the statutory trusts of a wife's fortune," as the case might be. These statutory trusts would be defined to include the usual limitations in favour of the spouses and their children, and the ultimate limitations, with hotchpot and advancement clauses, and so on. The *Law Quarterly Review* for this quarter contains another article by the same author—"Further Suggestions for Shortening Conveyances"—and the editor states in a note that Sir HOWARD'S death happened on the very day, 3rd January, when the last writing to which he set his hand was finally passed for press. And Sir FREDERICK POLLOCK adds the following short appreciation:—

> He belonged to a kind and a generation of scholarly lawyers whom it will be difficult to replace. His learning has many times been at the disposal of readers of this *Review*, who are aware that its depth did not prevent it from being various and humane.

In this, his last article, Sir HOWARD made suggestions for giving in short form the various powers which have in practice been found necessary to supplement the powers conferred by

the Settled Land Acts on tenants for life, and also for extending the powers and indemnity of trustees. Of course, on the latter head much has already been done, and the existing provisions in favour of trustees are contained in the Trustee Act, 1893. As to further powers of tenants for life, it is suggested that these might be conferred by statute, though the statute "will be of enormous length, and will have to be amended from time to time as fresh powers are required; for instance, it may be necessary in a few years to give powers to provide landing-places for airships." Or powers might be given to the tenant for life to deal with the land as if he were absolute owner, subject to certain restrictions for protecting persons claiming under the settlement. Probably the latter would be the preferable course, but at present there is no need to pronounce an opinion on these suggestions. When the country is again free for domestic business, and conveyancing reform is once more a living question, Sir HOWARD ELPHINSTONE'S articles will, we do not doubt, meet with the consideration to which his great experience and reputation entitle them.

Costs where Fraudulent Use of Trade-Mark.

A CURIOUS and unusual case came up for decision in the latter part of last year (33 R. P. C. 399). The Havana Commercial Co., carrying on business as cigar manufacturers in New York and Havana, applied here in February, 1915, for the registration as a trade-mark for cigars of a label containing the word "Cubanola." This was opposed by an English firm of cigar merchants who had for over twelve years sold British cigars in boxes having on their lids an oval brand with the words "Cubanola Superiors" and "de Lorenzo y Ca," which was apparently a fictitious firm, and also having the Havana coat of arms. In July, 1915, they substituted "Manufactured in Great Britain" for "de Lorenzo y Ca." Their grounds of opposition were their use of Cubanola and that the proposed registration would injure them in their business, and that "the registration and use by the applicants of the word 'Cubanola' in connection with cigars would cause confusion in the trade and to the public." The Registrar of Trade-Marks said that, had the English firm come into court as plaintiffs to restrain the applicants from using "Cubanola," they must have failed, as they would not have come into Court with "clean hands"; but in the present proceedings they were in the position of defendants, and he could not say that they were absolutely debarred from being heard. He refused registration to the applicants, though "with regret." The applicants appealed to the Court, and the appeal came before PETERSON, J.

Costs of Trade-Mark Appeals.

Mr. Justice PETERSON agreed that the opponents' trade in their Cubanola cigars had been fraudulent, but said that he had to consider the application to register from the point of view of the public, and that to accede to it might lead to confusion in the minds of the public, and therefore he could not properly interfere with the discretion of the Registrar. He dismissed the appeal. At first he said that he did not propose to allow the opponents the costs of the application to the Court. Counsel for the opponents then drew attention to *Newman* v. *Pinto* (4 R. P. C. 508). This also was a case relating to cigars, in which the plaintiff sued the defendants for infringement of his trade-mark. Both parties were selling British cigars in boxes with a similar get up, which the Court of Appeal held was fraudulent. KEKEWICH, J., who tried the action, found in favour of the plaintiff and granted an injunction with the costs of the action. The defendants appealed, and the appeal was allowed on the ground of false representations made by the plaintiff on his boxes. COTTON, L.J., said "The action ought to have been dismissed. But then, as the defendants are themselves carrying on a trade with a similar misrepresentation on the boxes which they sell, I think that they cannot successfully ask the Court to give them the costs of the action. But as regards the appeal, I think, according to our rule, although the action ought to be dismissed without costs, we ought to give the costs of the appeal to the successful appellants." The costs of the trial which the defendants had paid to the plaintiff were directed to be refunded to them. After the citation of this case, PETERSON, J., said that he should like to deprive the opponents of costs, but he did not think he could do so, and he dismissed the appeal to him with costs.

Torts by Auctioneers.

IT IS not always easy to see at first glance why the doctrine of *respondeat superior* is inapplicable in some particular case. A good example is afforded by the recent decision of a Divisional Court in *Walker* v. *Crabb* (reported elsewhere). There a contractor and carman instructed an auctioneer to sell by auction on the principal's premises certain horses and vans which were the property of the latter. The sale took place in the yard and the owner was present. The plaintiff attended the auction, and was kicked by a mare which a man was running up and down the yard to show off its paces. He sued the owner in the county court for damages caused by the alleged negligence of the auctioneer or his servants, claiming that the auctioneer was merely the owner's agent, so that the latter was responsible for his torts; but both in the county court and on appeal in the High Court he failed. He relied on the broad principle that, if an owner of goods permits a sale on his premises, he is liable for the negligence of the seller, whether an auctioneer or any other agent of his (*Howard* v. *Braithwaite*, 1812, 1 V. & B. 210). But this contention ignores the relationship between an auctioneer and the owner who instructs him. The auctioneer is neither servant nor agent of the owner, in the sense required by the doctrine *respondeat superior*. He is a skilled professional man who undertakes a piece of work as an independent contractor; and his contract is *conductio rei operandae*, like that of a carrier or a dentist, not a contract of service or agency, such as is necessary to make his principal liable for his torts. Of course, if the owner expressly or impliedly authorizes the auctioneer—or any other independent contractor—to do an unlawful act, or an act of negligence, he is liable for the latter's tort (*Bower* v. *Peate*, 1876, 1 Q. B. D. 321); but he is liable not as superior, but by virtue of another maxim, *Qui facit per alium, facit per se*.

Jus Quæsitum Tertio.

Jus quæsitum tertio is in Scottish law a right vested in or acquired by a third party. Where in a contract between certain parties a stipulation or provision is made in favour of a third, who is not a party to the contract, the right thus created is called a *jus quæsitum tertio*. The rule of the English common law, by which the agreement of contracting parties cannot confer on a third person any right to enforce the contract, would appear to be inconsistent with the rule prevailing in Scotland, but a recent decision in the Court of Session (*Ferguson* v. *Aberdeen Parish Council*, 53 Sc. L. R. 619), seems to have been decided upon grounds which are in conformity with the English law. A parish council effected a policy of insurance against fire upon the contents of a poorhouse belonging to them. The policy covered, *inter alia*, the property of their servants, who were not, however, cognisant of the fact, and had not ratified it. A fire occurred which destroyed, among other things, the effects of a children's superintendent who had rooms in the poorhouse. The total amount recovered by the council under the policy was, however, not more than the value of their own property destroyed by the fire. In an action at the instance of the superintendent against the council, it was held that the former was not entitled to recover any part of the amount of the loss of her property due to the fire. Lord SALVESEN, in giving judgment, expressed his opinion that, even if the defendants had recovered any sum in respect of the plaintiff's property, it was doubtful whether the defendants would be bound to hand over the amount to the plaintiff. It might well be that, if the defendants had insured for their servant's benefit, and had recovered in respect of the servant's loss, they would have been

only too glad to have handed over the money to her. But it was a very different thing to say that there was a legal right on the part of the plaintiff to recover any sum which the insurance company, being under no legal liability to pay at all, had in fact paid. We may compare this decision with the English case of *Marshall* v. *York, Newcastle, and Berwick Railway* (11 C. B. 655), where the Court held that a servant could recover from the company for the loss of a portmanteau belonging to him, though his fare was paid by his master, who was travelling by the line. The English rule has been stated broadly that an agreement between A and B that B shall pay C gives C no right of action against B; but this is subject to an exception where B is in effect a *cestui que trust*, and on this ground entitled to the benefit of the agreement: *Touche* v. *Metropolitan Railway Warehousing Co.* (6 Ch. App., p. 677); *Re Empress Engineering Co.* (16 Ch. D., p. 129); *Gandy* v. *Gandy* (30 Ch. D., p. 67).

Damage from Atmospheric Concussions.

THE FRIGHTFUL explosion near London resembles in some of its details the Erith explosion, which took place on 1st October, 1864, in the gunpowder magazines of Messrs. HALL, at Erith. Not only were the magazines destroyed, but great destruction was occasioned to the buildings in the neighbourhood, and even at a considerable distance walls were thrown down, windows driven in, glass broken, and furniture in many instances injured. The law as to the liability under fire policies in cases where fire was not the proximate cause of the damage, which arose from shock and concussion of the air alone, and where there was no special provision applicable thereto, was not regarded as fully settled in 1864, and in the case of *Everett* v. *The London Assurance Co.* (19 C. B. N. S. 126) the question was for the first time settled by a positive decision. The claim was made under a policy which provided that the insurers should make good "such loss or damage as might be occasioned by fire to the property of the assured." The plaintiff's premises, which were rather more than half a mile distant from the spot where the explosion took place, were not set on fire by the explosion of the gunpowder, nor was any part thereof burnt, heated, or scorched by the explosion. The injury they sustained consisted in the shattering of the windows and the damage of the structure generally by the atmospheric concussion caused by the explosion. The case was argued by able counsel for the plaintiffs, who could only rely on the fact that payments in respect of similar losses were in accordance with the usual custom of insurance companies, as also where property was injured by water used to put a fire out. The Court (ERLE, C.J., and WILLES and BYLES, JJ.) had no difficulty in holding that the damage was not occasioned by fire within the meaning of the policy, and gave judgment for the defendants. The Court proceeded on the distinction between the proximate and the remote cause of the loss, adding, however, that this distinction is apt to lead us into philosophical mazes.

The Earthworks Committee of the Congress of Archæological Societies, in their report on the present condition of a number of ancient earthworks and enclosures in various parts of the country, state that the information they have gathered shows that vandalism, due to carelessness or ignorance, is always to be feared, even in the case of such a well-known monument as Stonehenge. It appears that the ancient right of way track through the enclosure has been damaged by military traffic and the stability of the stones endangered by bomb practice, but the military authorities, on the conditions being brought to their notice early last year, at once took steps to stop bomb practice and to divert the traffic. Another case dealt with is that of Connington Park Camp, Somerset, to which attention was called in May last year by Mr. H. St. George Gray in a letter to the *Times*. This site was in danger of being damaged or destroyed by mining operations, and the committee report that the Camp at present is safe, merely because it is doubtful whether the mineral veins under it could be profitably worked. The case, they add, brings out forcibly that there exists no power under the Ancient Monuments Consolidation and Amendment Act to give compensation or to acquire a site when its destruction would be profitable to the owner or tenant.

The Military Service Acts.

II.—THE GENERAL CONDITIONS OF LIABILITY (*continued*).

(3) *Age Limits.*—As regards the third general condition, that of the age limits, the Acts create some confusion at first sight rather than any substatial difficulty of interpretation. The age-limits are arrived at in this way. Men who attain the age of eighteen become liable to service on the thirtieth day after attaining that age (second Act, s. 1 (1)), if they were ordinarily resident in Great Britain at any date between 14th August, 1915, and 25th May, 1916, the date of commencement of the second Act. Men who have since the latter date become ordinarily resident in Great Britain become liable to service, if over eighteen, when they so become ordinarily resident, on the thirtieth day after becoming "ordinarily resident," whatever that may mean; and, if under eighteen, on the thirtieth day after attaining eighteen. This appears to be the result of the rather complicated provisions in section 1 (1). Men who had not attained forty-one years—*i.e.*, their forty-first birthday—on "the appointed date" become liable to service on that date. But the "appointed date" appears to have four different meanings in the case of this upper age-limit. First, in the case of "unmarried" men—whom the first Act defines as including bachelors and widowers without children who were of these respective statuses on 2nd November, 1915—the "appointed date" was 2nd March, 1916. Secondly, in the case of "married" men (in the above statutory sense), it was 24th June, 1916.

But there are two other possible cases. Thirdly, where a man becomes "ordinarily resident" after 25th May, 1916, the appointed day is for him the thirtieth day after he becomes "ordinarily resident"—and it is almost impossible to say how this is to be calculated. Suppose a man of forty years and ten months comes to England from Canada to-day with the settled intention of acquiring an ordinary residence here, is the appointed day for him the day he attains the age of forty years and eleven months? If so, he is within the Act. If it is some later date, after his intention to reside has become "ordinary residence," then he will be over forty-one on the appointed day and outside the Act.

Fourthly, again, it is a little difficult to ascertain the meaning of the "appointed day" in the case of rejected men who are excepted by the first Act but rendered liable to service by section 3 (2) of the second Act on receipt of a notice calling them up for re-examination before 1st September, 1916. The exception is to "cease to apply" in their case on that date. Does this mean that, on the 1st September, 1916, such men are within the Act just as if there had been no exception protecting them? In this case the "appointed day" is 2nd March or 24th June, according as they were unmarried or married, and their age on that date is the important question. Or does it mean that such men come within the Acts on 1st September, 1916, in which case 1st October—thirty days later—is the appointed day which fixes their age for military purposes. The point is important in practice, since there must be many time-expired men who have attained the age of forty-one between 2nd March and 1st October, 1916, and the liability of all these men depends upon it. Where a statute is ambiguous the ambiguity should be interpreted in favour of the person on whom a burden is to be imposed, and therefore we prefer the first of these alternative interpretations.

In conclusion, we must point out that there is one great difficulty in the way of getting a uniform interpretation by the courts on any of the points at issue. Section 1 (2) of the first Military Service Act throws on the subject the burden of adducing satisfactory evidence to shew that he is not within the Act, and the result is that magistrates in a difficulty often find as a fact that the defendant has not produced satisfactory evidence of this important fact. The result is that he is deemed to be within the Act, and appeal on the legal point is rendered very difficult. We shall suggest, later on, a practical way of

meeting this difficulty, so as to get a proper decision of a superior tribunal on a vexed point of law.

III.—Exceptions to Statutory Liability.

We have seen that male persons liable to military service consist *primâ facie* of all British subjects who at the appointed date were ordinarily resident in Great Britain and within certain limits of age. But the Military Service Act, 1916, excludes certain of such persons from the operation of the statute. Such persons are (1) those who are "within the exceptions set out in the First Schedule to this Act," as modified by the second Military Service Act; and (2) those who have "attained the age of forty-one years before the appointed date." The latter exception we have considered already in discussing the precise limits of military age, and no further reference to it is necessary. The scheduled exceptions, however, must now be considered. The First Schedule to the earlier Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), creates these exceptions in the following terms:—

Exceptions.

1. Men ordinarily resident in His Majesty's Dominions abroad, or resident in Great Britain for the purpose only of their education or for some other special purpose.
2. Members of His Majesty's regular or reserve forces, or of the forces raised by the Governments of His Majesty's Dominions, and members of the Territorial Force who are liable for foreign service or who are, in the opinion of the Army Council, not suited for foreign service.
3. Men serving in the Navy, or the Royal Marines, or who, though not serving in the Navy or Royal Marines, are recommended for exception by the Admiralty.
4. Men in holy orders or regular ministers of any religious denomination.
5. Men who have left or been discharged from the naval or military service of the Crown in consequence of disablement or ill-health (including officers who have ceased to hold a commission in consequence of disablement or ill-health) [*and subject to any provision which may hereafter be made by Parliament, men who have been discharged from the naval or military service of the Crown on the termination of their period of service*].
6. Men who hold a certificate of exemption under this Act for the time being in force (other than a certificate of exemption from combatant service only), or who have offered themselves for enlistment and been rejected since the fourteenth day of August nineteen hundred and fifteen [unless they have received before 1st September, 1916, written notice to present themselves for re-examination].

It will be noticed that we have made two amendments, indicated by square brackets, to the statutory words. The phrase within square brackets in paragraph 5 was repealed by the second statute, section 3 (1), and the addition within square brackets to paragraph 6 summarizes the alteration in that paragraph made by the second Act, section 3 (2). Since the liability imposed by the later Act is universal, including both single men covered by the earlier Act and married men brought in by the later, we may for practical purposes treat the exceptions as if these alterations had been in them from the outset. But just a word should be said here on two general matters. The first of these concerns the onus of proving that a man is within one of the exceptions to liability. We should expect this to rest on the Crown when proceeding against any man as an absentee. But, as just pointed out, the first Act provides that where a man's claim to be free from liability to service is disputed in any legal proceedings arising under the Army Act and Reserve Forces Acts, 1882-1907—which are applied by the Act to conscripts—the man shall be deemed to be a statutory conscript unless he gives satisfactory evidence to the contrary (section 1 (2)). The practical effect of this will be considered more fully when we come to deal with proceedings under the statute; at present we need only note that every male person, apparently, is presumed to be of military age, British nationality, and otherwise liable to military service, until he proves the contrary.

The most general point to be noted is the distinction between "excepted" and "exempted" men—classes which are constantly confused in practice and even in Army Orders. "Excepted" men are those who (1) satisfy the general conditions as to liability already enumerated under Part II., but (2) are nevertheless not within the Act because they satisfy a condition of exclusion set out in the Schedule of Exceptions. One of these classes, and one only, consists of "exempted" men—namely, those "who hold a certificate of exemption under this Act for the time being in force (other than a certificate of exemption from combatant service only)" (paragraph 6). But there are three other classes of "exempted" men, popularly so called, who are dealt with differently: (1) Attested men who have received a certificate of exemption from one of the statutory authorities empowered to grant such certificates; these men are in the Army and are therefore excepted by that fact under paragraph 2, and not by reason of their certificates of exemption under paragraph 6, since they received their certificates from the tribunal otherwise than in its statutory capacity; (2) men, whether attested or unattested, to whom the recruiting officer, by virtue of his authority under the Recruiting Regulations or Army Orders for the time being in force, has granted a certificate of exemption from being called up, subject to certain conditions, for a certain period of time; such men are, in fact, reservists not yet called up; and (3) men exempted from combatant service only, who remain within the Act but cannot be lawfully ordered to perform combatant services. For convenience we will deal with all these classes of exempted men in a separate article, including those who are in fact "excepted" men as well as "exempted" men.

We now pass on to the consideration of each exception in order. The first paragraph, as was pointed out in our last article, is almost impossible to interpret, but it purports to except three classes of persons: (1) those ordinarily resident in His Majesty's Dominions abroad, (2) those resident in Great Britain for educational purposes only, and (3) those resident for some other special purpose. As regards the first class, it is submitted that it includes Irish, Colonial and Indian subjects who, although they were in fact ordinarily resident in Great Britain on 2nd March, 1916, or 24th June, 1916, or other the "appointed date," yet either on that date, or prior to visiting this country at all, had an "ordinary residence" (we have discussed the meaning of this term in the last article) in their original home as well. This, however, is not the general view taken by justices, who assume that, if a man is "ordinarily resident" in Great Britain on the appointed date, he cannot possibly be also "ordinarily resident" in Ireland or elsewhere so as to be excluded from liability by this exception. We see no foundation for this common view, but there is no authoritative decision of any court on the point. Residence for "education" only hardly requires comment. Residence for "some special purpose only," in our opinion, includes Canadian artizans and Irish harvest labourers who have come to England since the war at the instance of the munition authorities or the Board of Agriculture—to mention two cases as to whose liability questions have arisen in the magisterial courts. But here again there is no authoritative decision, and justices have generally found the contrary under the disguise of a finding of fact.

(To be continued.)

The new Claims and Record Office for Unemployed Insurance which has been erected on the plot of market gardens between Defoe-avenue and the River Thames at Kew is now nearing completion, and a section of the staff of clerks are already at work. The offices will accommodate between 800 and 900 employees. This Department was, until 15th January, administered by the Board of Trade, but it has now been taken over by the Ministry of Labour. Until now the work of administration, says the *Times*, has been split up into eight divisions, scattered over Scotland, Ireland and the United Kingdom. Each division, though complete in itself, was only a part of the whole, and the authorities found that the system involved a certain lack of uniformity. To obviate this, and to secure economy in administration, the building at Kew has been erected, and from it all the business of Unemployment Insurance will be transacted. The buildings in different parts of the country hitherto used for this purpose will be taken over by other Government Departments.

Internment of War Vessels in the United States.*

By Charles Henry Huberich, J.U.D., D.C.L., LL.D., of the United States Supreme Court Bar, Counsellor-at-Law, Berlin, Hamburgh, The Hague; and Richard King, Solicitor of the Supreme Court, England, London, and The Hague.

In connection with the internment of certain German war vessels in the United States, some interesting questions of international law have arisen, more particularly the nature of the repairs that may be made in neutral ports, the twenty-four hours' rule, the status of tenders, and the obligation of belligerents in respect of the assurances given by the personnel of the interned vessels.

In the middle of October, 1914, the German war vessel *Geier* and the German ship *Locksun* arrived at the port of Honolulu, where the former undertook to make repairs. On 28th October, 1914, the British and Japanese Embassies in Washington requested the internment of the war vessel and the detention of the merchant ship pending further inquiry as to the question whether she was furnishing supplies to a belligerent warship. The port authorities at Honolulu reported that the captain of the *Geier* had requested permission to make repairs to render the vessel seaworthy, and upon recommendation of the American naval authorities the time for repairs had been extended, owing to the condition of the vessel.

On 30th October, 1914, the Counsellor of the State Department advised the German Embassy of the position of the American Government, and made the following interesting statement in reference to the rule applicable in cases of vessels in a bad state of repair at the outbreak of the war:—

> The circumstances in this case point to the gunboat *Geier* as a ship that, at the outbreak of war, finds itself in a more or less broken-down condition and on the point of undergoing general repairs, but still able to keep the sea. In this situation the Government believes that it does not comport with a strict neutrality or a fair interpretation of the Hague Conventions to allow such a vessel to complete unlimited repairs in a United States port. The Government therefore has instructed the authorities to notify the captain of the *Geier* that three weeks from 15th October will be allowed the *Geier* for repairs, and that if she is not able to leave American waters by 6th November the United States will feel obliged to insist that she be interned until the expiration of the war.

In respect of the *Locksun* the Secretary of State informed the British Embassy, under date of 30th October, 1914, that orders had been issued for the detention of this vessel, pending an investigation as to whether she had furnished supplies to belligerent warships. The result of the investigation as to the *Locksun's* conduct was communicated to the German Embassy in a letter of 7th November, 1914:—

> Referring to my previous communication to you of 30th October regarding the internment of the German cruiser *Geier*, the Department is now in possession of information that the German steamship *Locksun*, belonging to the Norddeutscher Lloyd Company, cleared 16th August, 1914, from Manila with 3,215 tons of coal for Menado, in the Celebes, that she coaled the German warship *Geier* in the course of her voyage toward Honolulu, where she arrived soon after the *Geier;* that the *Locksun* received coal by transfer from another vessel somewhere between Manila and Honolulu, and that the captain stated that he had on board 245 or 250 tons of coal when he entered Honolulu, whereas investigation shewed that he had on board approximately 1,600 tons. From these facts the Department is of the opinion that the operations of the *Locksun* constitute her a tender to the *Geier*, and that she may be reasonably so considered at the present time. This Government is, therefore, under the necessity of according the *Locksun* the same treatment as the *Geier*, and has taken steps to have the vessel interned at Honolulu if she does not leave immediately.

The German Government, in regard to the *Locksun*, inquired as to the regulations upon which the detention of the ship was based, and stated:—

> The *Locksun* cannot be considered as a man-of-war, nor even an auxiliary ship, but is a simple merchant ship. As to the alleged coaling of H.M.S. *Geier* from the *Locksun*, the neutrality regulations of the United States only provide that a vessel can be prevented from taking coal to a warship for a period of three months after having left an American port. As the *Locksun* left the last American port (Manila) on 16th August she ought to be free on 16th November.

The *Geier* was dismantled on 7th November, 1914. Regarding the *Locksun*, the German Ambassador wrote under date of 21st November, 1914:—

> Under-Secretary of State Lansing informed me in his above-mentioned letter of the 16th instant that the s.s. *Locksun* had been interned because she had served as a tender to H.M.S. *Geier*, had thereby assumed the character of a belligerent, and was to be considered as part of the equipment of a war vessel. To this I wish to say that there is, so far as I know, no international law or stipulation in existence which imparts the character of a warcraft, *i.e.*, of a "part of a warship" to a tender, on account of her accompanying a warship. The situation in times of peace also proves this. Where there is a likelihood of the warship being unable safely to get along on her own resources there is the necessity of sending tenders along. This is rather often done in time of peace without causing such tenders to be considered and treated on that account as "parts of the warship concerned," or, in the light of international law, even as warships.
>
> Granting, however, that such vessel could actually be considered as "part of a warship," then there could be no doubt that its part as a coaling and supply ship would come to an end at the very moment the warship is interned, and she would then cease to be "part of a warship."

The point raised by Ambassador Bernstorff was answered by Secretary of State Bryan in a letter of 11th December, 1914:—

> I have the honour to acknowledge the receipt of your note of the 21st ult. in regard to the internment of the German steamship *Locksun* at Honolulu.
>
> In reply I have the honour to call your attention to the expression "part of a warship," which occurs throughout your note. I do not understand from what source this expression is derived, as I do not find it in the correspondence of the Department to you on this subject. In my note to you of the 16th ult. it was stated that the *Locksun*, having been shewn to have taken the part of a supply ship for the *Geier*, is, in the opinion of this Government, stamped with the belligerent character of that vessel, and has really become part of her equipment. This, of course, does not state that she is a "part of a warship." A tender is a part of the equipment of a vessel of war in the sense of acting as an auxiliary to such a vessel in the matter of carrying supplies and possibly giving other assistance. In a very real sense a vessel of war so attended may be considered as a belligerent expedition of which the tender is a part of the equipment, but to put a tender in the category of "part of warship" is to suggest that the treatment to be accorded to the tender shall be governed by the rules of contraband.
>
> In the circumstances of this case, as known by the Department, it is obliged to state that it still adheres to its previous position, that the status of the *Locksun* as a tender to the ship of war *Geier* was sufficiently proved to justify her treatment as such. In this connection the Department has the honour to call to your attention the following quotation from the award of the Alabama Claims Commission, which seems to establish this principle regarding the treatment of tenders, although the application of this statement was not made to the exact circumstances of the *Locksun* case:—"And so far as relates to the vessels called the *Tuscaloosa* (tender to the *Alabama*), the *Clarence*, the *Tacony*, and the *Archer* (tenders to the *Florida*), the tribunal is unanimously of opinion that such tenders or auxiliary vessels, being properly regarded as accessories, must necessarily follow the lot of their principals and be submitted to the same decision which applies to them respectively."
>
> The entire practice of the internment of vessels appears to be of recent origin. The doctrine of internment was apparently first applied to any great extent during the Russo-Japanese war, and it is believed that the treatment of the *Locksun* is in keeping with the high standard of neutrality upon which the doctrine of internment is based. The Department is not aware that measures to preserve neutrality are entirely dictated by precedent and international law, and it believes that belligerents hardly have proper cause to question an attitude on neutrality justly in advance of precedent and international law if it is applied by the neutral impartially to all belligerents. As to the advisability of assuming such an attitude, the Department is impressed with the proposition that the neutral, and not the belligerent, is the proper judge in the circumstances.

An incidental question arose as to the internment of some of the personnel of the *Geier*. Two officers had been granted sick leave on 28th October, 1914, and left Honolulu on that date. These officers and their orderlies, upon their arrival on the mainland of the United States, were interned. It was contended by the German Government that inasmuch as these

* The correspondence herein referred to is contained in the diplomatic correspondence with Belligerent Governments relating to Neutral Rights and Duties, published by the Department of State of the United States. European War, Nos. 2 and 3.

officers had left the ship prior to its internment on 7th November, 1914, they were not subject to internment. The request of the German Government was not acceded to, and the reasons therefore were set forth in a note to the German Embassy under date of 27th November, 1914:—

> This Government, in its observance of a strict neutrality, is under obligation to retain these gentlemen in custody as a part of the *Geier's* company when she entered American jurisdiction. It appears that these men were not only duly incorporated in the armed forces of Germany, a belligerent power, but were also in a sense of an organised body of such forces entering a neutral port. In such a case the laws of maritime warfare permit a limited hospitality to be extended to them dependent upon their observing certain conditions. In the case of the *Geier* these conditions were, it is believed, very generous. After a delay of several days within the hospitality of the United States, instead of the conventional twenty-four hours, these officers and their orderlies appear to have been granted sick leave by the captain of the *Geier*. This fact, however, cannot, it is believed, properly be urged as separating them from the *Geier* in relation to its subsequent treatment. They arrived within United States jurisdiction as a part of an organized armed force of the German Empire, and this fact, in the opinion of this Government, appears to be the crux of the whole matter. Were a distinction to be made on the grounds set forth in your note a ship in danger from her enemy might enter a neutral port, and before the twenty-four hours period had elapsed, and before there was any danger of internment, her officers and crew might leave her and afterwards claim the right to return to their country as individuals. This course would manifestly not comport with the principles of neutrality as they are understood by the Department.

In the case of the German warship *Prinz Eitel Friedrich*, the United States accorded a period of fourteen working days for the making of repairs necessary to put the vessel in a seaworthy condition, and an additional twenty-four hours to leave the territorial waters of the United States. In a communication to the British Embassy, the American Department of State advised that the rule of international law, that a belligerent warship may not leave a neutral port or roadstead until twenty-four hours after the departure of an enemy merchantship would be observed by *Prinz Eitel Friedrich* upon her departure from an American port.

In the case of the German cruiser *Kronprinz Wilhelm*, the German Government conceded the time necessary for the making of repairs with the exception of repairs rendered necessary to cover the damage to the cruiser received in war service.

(*To be continued.*)

Books of the Week.

The Law Quarterly Review. January, 1917. Edited by the Right Hon. Sir FREDERICK POLLOCK, Bart., D.C.L., LL.D. Stevens & Sons (Limited). 5s.

The Journal of the Society of Comparative Legislation. January, 1917. Edited for the Society by Sir JOHN MACDONELL, K.C.B. LL.D., F.B.A., and EDWARD MANSON, assisted by C. E. A. BEDWELL. John Murray. 6s.

An Epitome of Recent Decisions on the Workmen's Compensation Act.

By ARTHUR L. B. THESIGER, ESQ., Barrister-at-Law.

(Cases decided since the last Epitome, Vol. 60, p. 693.)

(1) DECISIONS ON THE WORDS "ACCIDENTS ARISING OUT OF, AND IN THE COURSE OF, THE EMPLOYMENT."

Wardle v. *H. G. Enthoven & Sons* (*Limited*) (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 13th and 14th December, 1916).

FACTS.—A labourer was employed to fill skips with ore, which were then taken up by a crane travelling on a gantry. The employers had premises on both sides of the street, and the gantry formed a bridge connecting the two. The gantry was floored to prevent injury to persons passing below. The workman filled a skip and shouted to the cranesman, but, getting no reply, went up on to the gantry. It was 10 p.m., and lights were obscured under the Defence of the Realm Regulations. He crossed the gantry almost to the end and fell through a trap-door which he could not see. There was a notice prohibiting ordinary workmen from going on the gantry, but the workman swore it had never been communicated to him. The county court judge found this to be a fact, but held that the accident did not arise out of the employment.

DECISION.—There was evidence to support the judge's finding; the accident arose from the workman going to a place where he had no duty to go, though he honestly thought that he had. (*From note taken in court.* Case reported SOLICITORS' JOURNAL, 6th January, 1917, p. 170; *Times*, 15th December, 1916; *L. J.* newspaper, 13th January, 1917, p. 11; *L. T.* newspaper, 13th January, 1916, p. 178.)

Maxwell v. *Ruabon Coal Co.* (*Limited*) (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 19th and 20th December, 1916).

FACTS.—A workman in a colliery had to take two trucks down an incline on a tramway. He went a little way in front of the trucks, holding them back with his body; he was found ten yards from the starting point, lying dead, with his legs close to the front truck. Medical evidence was given that his heart was seriously diseased and that he was liable to die at any moment, even without any sudden strain; there was no evidence that what he was doing would have caused any strain. The county court judge held that the applicants had not discharged the onus of proof, and found for the employers.

DECISION.—The judge was right. (*From note taken in court.* Case reported *L. T.* newspaper, 30th December, 1916, p. 146.)

Mills v. *Dunnington Main Coal Co.* (*Limited*) (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 20th and 21st December, 1916).

FACTS.—A miner received a blow on the fleshy part of his leg on the 18th April, 1916. He continued to work for some time, but on the 29th May he went to a doctor and notice of accident was given to his employers. On the 10th June he saw a specialist, who diagnosed the disease from which he was suffering as osteomyelitis, which is an obscure disease and very rare among adults. The miner was operated upon, but died. In the arbitration a doctor called for the applicants said that in the case of an adult this disease always arose from a definite cause, and he attributed it to the accident. The county court judge held that the workman had died from the consequences of an accident arising out of or in the course of his employment, and that the employers had not been prejudiced by want of notice of the accident at an earlier date.

DECISION.—There was evidence to support his finding on both points. (*From note taken in court.* Case reported SOLICITORS' JOURNAL, 20th January, 1917, p. 202; *L. T.* newspaper, 30th December, 1916, p. 146.)

(2) DECISION ON THE WORD "WORKMAN."

Griffith v. *Owners of Sailing Ship "Penrhyn Castle"* (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 11th and 18th December, 1916).

FACTS.—A master mariner had retired and been employed by the respondents as an overlooker, earning about £130 a year. He was asked to go to a foreign port and take charge of *The Penrhyn Castle* and to sail her to another foreign port. He was then either to sail her home, or, if she was ordered elsewhere, he was to return home by passenger ship. The probable duration of this employment would be not more than six months. He was to be paid £10 a month while on a passenger ship, and £20 and board while in command of his ship. The ship was lost with all hands on the way to the second foreign port. Up to that time he had earned £24 10s. a month. The county court judge held that, as this sum multiplied by twelve exceeded £250, the deceased was not a workman within the meaning of the Act.

DECISION.—As the total employment would last less than a year and the total amount which could be earned under it was less than £250 it was impossible to say that his remuneration under the contract exceeded £250 a year. (*From note taken in court.* Case reported *L. T.* newspaper, 13th January, 1917, p. 178.)

(3) DECISIONS AS TO INCAPACITY RESULTING FROM THE INJURY.

Bower v. *Meggett* (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 20th December, 1916).

FACTS.—A workman injured his knee by accident, and was treated at the hospital for arthritis, a natural consequence of the accident he had sustained. It was discovered later that a small bone in the knee had been broken. It was contended on behalf of the employers that there had been a *novus actus interveniens*, that the treatment at the hospital had not been a proper one, and that proper treatment would have reduced the extent of his disablement. The county court judge

held that the workman had not discharged the onus of proving that there had been no *novus actus intervenions*, and that his condition resulted from the accident, and not from some intervening cause.

DECISION.—The workman had proved incapacity for work resulting from an accident, and the onus then lay on the employers to prove a break in the chain of causation; that onus had not been discharged. Appeal allowed. (*From note taken in court.* Case reported *L. T.* newspaper, 20th January, 1917, p. 198.)

(4) DECISIONS ON THE AMOUNT OF COMPENSATION.

Greenwood v. *J. Nall & Co.* (*Limited*) (H.L.: Lords Loreburn, Kinnear, Shaw and Parmoor, 2nd and 3rd November, 1916).

FACTS.—A carter, who had been employed for three years in the same grade, was killed by accident. He had been absent from work from illness or injuries for short periods amounting to six months in the three years. The widow claimed £212 11s., being 156 times his average weekly earnings while at work; the employers contended they were only liable for £168 13s. 5d., the sum actually earned in the three years preceding the injury. The county court judge upheld the employers' contention, holding that the employment had been uninterrupted, and his decision was affirmed by the Court of Appeal.

DECISION.—There had been an interruption of the employment, and therefore £212 11s. was the sum payable. (*From note taken in court.* Case reported SOLICITORS' JOURNAL, 11th November, 1916, p. 54; *W. N.*, 11th November, 1916, p. 363; *L. J.* newspaper, 11th November, 1916; p. 537; *L. T.* newspaper, 11th November, 1916, p. 22.)

Heathcote v. *Haunchwood Collieries* (*Limited*) (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 12th December, 1916).

FACTS.—A collier met with an accident which deprived him of the sight of one eye. Before the accident he earned £1 15s. a week; after it he obtained employment with other employers as a carter at £1 10s. a week. The county court judge found that work at the coal face was not a "suitable" employment for him within section 3 of Schedule I., but that he might have obtained work as a packer or loader, which was suitable, at 7s. 5d. a day. He awarded compensation at 5s. a week, the difference between £1 15s. and £1 10s.

DECISION.—As the judge had found the applicant could have earned 7s. 5d. a day at a suitable employment no compensation was payable. (*From note taken in court.* Case reported *L. T.* newspaper, 30th December, 1916, p. 147.)

(5) DECISIONS AS TO NOTICE OF ACCIDENT AND CLAIM FOR COMPENSATION.

Lochgelly Iron and Coal Co. (*Limited*) v. *Hepburn & Kirk* (H.L.: Lords Haldane, Kinnear, Shaw and Parmoor, 30th October, 1916).

FACTS.—A workman was killed by accident on the 28th December, 1914; notice of the accident was given nine days later. The Sheriff-Substitute held that notice was given as soon as practicable after the accident, and that the employers had not been prejudiced in their defence by want of notice. The Second Division of the Court of Session differed on the first question, but agreed that there was evidence on which the arbitrator could find that the employers had not been prejudiced.

DECISION.—There was evidence to support the finding, so the House had no jurisdiction to review the award. (*From note taken in court.* Case reported SOLICITORS' JOURNAL, 4th November, 1916, p. 41; *W. N.*, 4th November, 1916, p. 352; *L. J.* newspaper, 4th November, 1916, p. 526; *L. T.* newspaper, 4th November, 1916, p. 5.)

Watts v. *Vickers* (*Limited*) (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 15th, 18th and 20th December, 1916).

FACTS.—A young woman was injured by accident in September, 1915. She continued at work until the 3rd November, and was then incapacitated until July, 1916. In the arbitration proceedings the employers alleged that no claim for compensation had been made within six months of the accident. The applicant stated that she wrote a letter and posted it herself on the 27th December to the works manager, claiming compensation, and she produced a copy, which she said she made at the time. The employers denied having received any such letter. The county court judge found that the letter had been posted, and, without deciding whether it had been received by the employers, held that a claim for compensation had been made within six months.

DECISION (Scrutton, L.J., dissenting).—A letter having been properly addressed and posted raised a presumption that it had been received, although that presumption might be rebutted. In this case the employers had failed to establish that the award ought to be set aside. (*From note taken in court.* Case reported *Times*, 21st December, 1916; *L. T.* newspaper, 30th December, 1916, p. 147.)

See also *Mills* v. *Dinnington Main Coal Colliery Co.* (*Limited*), reported above under the heading "Decisions on the words 'Accidents arising out of, and in the course of, the employment.'"

(6) MISCELLANEOUS DECISIONS.

Warburton v. *Co-operative Wholesale Society* (*Limited*) (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 6th, 9th, 11th and 15th December, 1916).

FACTS.—An overlooker in a mine was injured by accident on the 7th February, 1914, and received compensation for two months. He then returned to work, but left it after a time and continued to receive compensation until March, 1915. He then returned to work, but enlisted in the Army a fortnight later. On the 4th September, 1914, the employers put up a notice agreeing to pay full wages, less Government allowances, to employees who were called up or volunteered for service. On the 7th September they posted up a further notice as follows: "Henceforward these conditions will apply only to those employees in the service of the society prior to the declaration of war." The overlooker claimed wages, but the employer contended that at the date of the declaration of war he was not an employee in the service of the society. The county court judge held that he was, and the Divisional Court affirmed his decision.

DECISION.—The contract of service was not terminated where a workman was receiving compensation under the Act. (*From note taken in court.* Case reported SOLICITORS' JOURNAL, 23rd December, 1916, p. 145; *Times*, 16th December, 1916; *L. T.* newspaper, 23rd December, 1916, p. 127; *L. J.* newspaper, 6th January, 1917, p. 4; *W. N.*, 20th January, 1917, p. 11.)

Round v. *Wathen & Son* (C.A.: Lord Cozens-Hardy, M.R., Warrington and Scrutton, L.JJ., 12th December, 1916.)

FACTS.—A woman was injured by accident, and her employers admitted their liability to pay half wages, 6s. a week during total incapacity. They were asked to file an agreement, but only consented to file one admitting liability to pay whatever compensation might be due under the Act, and 6s. a week during total incapacity, the amount payable during partial incapacity to be settled by agreement or arbitration under the Act when total incapacity ceased. The woman contended that she ought to be paid 6s. a week until that sum "was ended, diminished, increased, or redeemed," and started arbitration proceedings. The county court judge made an award of 6s. a week in the usual form to continue until "ended, diminished, increased or redeemed" in accordance with the provisions of the Act. The employers appealed, on the ground that there was no dispute or question as to liability to pay compensation, or as to the amount or duration of the compensation.

DECISION.—There was a dispute as to the duration of the compensation, and the judge had followed the proper form of award. (*From note taken in court.* Case reported *W. N.*, 23rd December, 1916, p. 426; *L. T.* newspaper, 30th December, 1916, p. 146.)

Moakes v. *Blackwell Colliery Co.* (C.A.: Lord Cozens-Hardy, M.R., Warrington, L.J., and A. T. Lawrence, J., 15th and 16th January, 1917).

FACTS.—An infant employed at a colliery was injured in October, 1907; he was paid compensation until April, 1911, by which time he had attained twenty-one years. An agreement as to compensation was then come to and recorded, under which the employers were to endeavour to find the workman suitable employment at their colliery, and were to pay him half the difference between the wages he could so earn and what he would have earned but for the accident, not exceeding £1 a week. In October, 1916, the workman issued a request for arbitration. The county court judge held that as there was an agreement on the register no award ought to be made.

DECISION.—The judge was right. The workman's proper course was to apply for leave to issue execution. (*From note taken in court.* Case reported next page; *L. T.* newspaper, 20th January, 1917, p. 199.)

An adjourned meeting of creditors was held on the 19th inst., says the *Times*, at the London Bankruptcy Court under the receiving order made against Mr. Edgar Alexander Baylis, solicitor, of the Guildhall, E.C., who since 1898 has held the appointment of Comptroller of the Corporation of the City of London. The first meeting was reported in the *Times* of 21st November. Mr. E. Leadam Hough, Senior Official Receiver, presiding, said that the business of the meeting was to vote on a scheme of arrangement under which a composition of 20s. in the pound would be paid by instalments to the unsecured creditors, except to certain creditors who agreed to withdraw their claims. A statement of the debtor's affairs showed gross liabilities £24,050, of which £14,221 was expected to rank for dividend, and net assets £1 2s. 10d. The creditors resolved that the scheme be accepted.

CASES OF THE WEEK.

Court of Appeal.

MOAKES v. BLACKWELL COLLIERY CO. (LIM.). No. 1.
15th January.

WORKMEN'S COMPENSATION—AGREEMENT TO PAY COMPENSATION—FLUCTUATING AMOUNT—DETERMINED BY REFERENCE TO CURRENT RATE OF WAGES—APPLICATION FOR AWARD—JURISDICTION—POWER TO ENFORCE AGREEMENT—WORKMEN'S COMPENSATION ACT (6 ED. 7, C. 58)—WORKMEN'S COMPENSATION RULES, 1913, R. 82.

A workman, after having been totally incapacitated for some time, entered into an agreement by which his employers undertook to provide him with suitable work, and in addition to pay him weekly compensation, on the basis of partial incapacity, the amount to be fixed at half the difference between what he was then capable of earning, and what he would probably have been earning if he had not been injured. The workman, after receiving varying sums of compensation, claimed more, as from a certain date, than the employers were willing to pay, and applied for an award.

Held, that the matter having been settled by agreement, there was no jurisdiction to make an award, but the rate of compensation could be fixed, and payment of it enforced, under rule 82.

Appeal by the workman from an award of the county court judge at Alfreton, Derbyshire, raising a point which was said to affect a great many agreements for compensation made between colliers and their employers. The workman, in 1907, when seventeen years of age, met with injury by accident in the course of his employment, by which he was totally incapacitated for work from October, 1907, to June, 1908. Liability was admitted, and full compensation paid. From June, 1908, to April, 1911, a reduced weekly payment was made. In April, 1911, an agreement was entered into between the parties and duly recorded, by which the company undertook to provide suitable employment for the workman, and pay him the wages earned at it, and also weekly compensation, to be fixed at half the difference between what he was capable of earning in such employment, working pit time, and what he would probably have been earning at the time, if he had not been injured, but not more, in any case, than £1 a week. Payments of compensation were made under this agreement varying from 3s. to 8s. 8d. a week, which satisfied the workman until January, 1916. Since then he had complained that he was not getting what he ought to get under it, having regard to the rise in wages, and he had applied for an award. The county court judge held that there was no question for him to decide, as the matter had been settled by agreement, and therefore he had no jurisdiction. The workman appealed.

THE COURT dismissed the appeal.

Lord COZENS-HARDY, M.R., said the appeal raised a point of interest and importance, and, having stated the facts and read the agreement, proceeded: The agreement was probably a reasonable one for the workman to enter into, and though it was easy to criticize, it had been acted upon for five years. The workman now said that he was entitled to an award, because it only provided for payment of an indefinite sum, which might vary from time to time, and therefore that a question had arisen for decision. His lordship could not accept the employers' argument that the workman ought to have applied for a review, because there could be no review without evidence of a change of circumstances. But he thought that there was another way in which the case could have been dealt with. There were great difficulties in having both an award and an agreement on the file. A special provision, however, in rule 82 met the appellant's point. The workman did not seek to re-open payments made to him before January, 1916, but contended that he had not had what he ought to have had since then, owing to the rise in wages. Under rule 82, he could apply to the Court for leave to issue execution, and on notice being given to the employer, and proof of the amount due, and in default of payment of it, an order for execution would be made. If cause was shewn to the contrary, or the registrar was in any doubt, he might refer the matter to the judge, who might make such order or give such directions as should be just. In that way the applicant would get the relief the law entitled him to. The Court must have power to enforce its own orders and recorded agreements. The learned judge was quite right in saying that the question raised had been settled by the agreement which it was not asked to be altered, but to be enforced. It was neither a case for an original application, nor for a review. The appeal must be dismissed.

WARRINGTON, L.J., and LAWRENCE, J., gave judgment to the same effect, the latter observing that it would be unfortunate if such an agreement, providing for a flexible rate of wages, could not be enforced.—COUNSEL, *T. E. Ellison; E. W. Cave.* SOLICITORS, *King, Wigg, & Co.*, for *Bertram Mather*, Chesterfield; *Ullithorne, Currey, & Co.*, for *C. F. Elliott-Smith*, Mansfield.

[Reported by H. LINGFORD LEWIS, Barrister-at-Law.]

HILL v. SETTLE. No. 1. 18th January.

BANKRUPTCY—VESTING OF PROPERTY IN TRUSTEE—RIGHT OF ACTION ACQUIRED AFTER ADJUDICATION—INTERVENTION OF TRUSTEE—PURPORTED WITHDRAWAL OF INTERVENTION—BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5, C. 59), S. 47.

The trustee in bankruptcy of an undischarged bankrupt who had entered into a partnership agreement gave notice to the bankrupt's partner requiring all moneys due or to become due to the bankrupt to be paid to him. A year later, the bankrupt having commenced an action against his partner for accounts and other relief, the trustee purported by notice in writing to the defendant to withdraw his previous intervention.

Held (*reversing* Eve, J.) (1917, 1 *Ch.* 105), *that the effect of the intervention was to vest the property claimed in the trustee absolutely, that he could not withdraw it, that any such purported withdrawal was futile to re-vest the property in the bankrupt, and that the action must be stayed until the trustee was made a party.*

Affleck *v.* Hammond (1912, 3 *K. B.* 162) *distinguished.*

Appeal by the defendant from an order made by Eve, J., dismissing an application by him to stay the action, which was for a partnership account. The plaintiff and defendant were both doctors, and in 1908 plaintiff became bankrupt, and was still undischarged. In 1913 the parties entered into partnership by deed, but very shortly afterwards it was verbally agreed between them that the defendant should solely carry on the partnership business, and should apply the plaintiff's share of the profits in payment of his debts. On 26th October, 1915, the Official Receiver, as trustee in the bankruptcy, wrote as follows to the defendant:—"I require payment to be made by you to me of all moneys due or hereafter to become due to you from the bankrupt, on the ground that he has not obtained his discharge in the proceedings." The defendant informed the plaintiff of the receipt of this notice. In March, 1916, the plaintiff issued the writ in this action, claiming that an account should be taken of what was due to him under the partnership agreement, and payment of the sum so found due, and also of a sum of £500, being the share of capital the defendant had agreed to contribute, and also for damages for breach of the agreement. On 7th July, 1916, the defendant applied that the action should be stayed until the Official Receiver was made a party. An order was made in chambers to that effect. On 31st July the Official Receiver wrote to the defendant's solicitor a letter purporting to withdraw his notice of intervention as follows:—"As there are disputes between the parties I am advised that my proper course is to withdraw the notice of 26th October, 1915, and I withdraw such notice accordingly." Eve, J., held that the intervention had been effective to deprive the plaintiff of his cause of action, but that the trustee could withdraw and had done so, and that such withdrawal dated back to 26th October, 1915. The defendant appealed, and contended that the trustee could not withdraw his intervention, and that in any event no withdrawal could make the action good.

THE COURT allowed the appeal.

Lord COZENS-HARDY, M.R., said the appeal raised a curious and interesting point, novel in its particular circumstances, and having stated the facts proceeded. He thought that the decision of Eve, J., that the intervention had been complete, and prevented the plaintiff from maintaining the action was quite right, so far as it went, and he could not assent to the argument that the intervention was too vague to affect the action. It was not a claim to all future assets, but to moneys due, and becoming due, from the defendant to the plaintiff. It was remarkable that the action was commenced before the withdrawal, when the intervention was in force. So long as it was in force the plaintiff could not commence it, and on that short ground alone the learned Judge ought to have come to a different decision from that he did. It was necessary to consider somewhat carefully the law as to the intervention of a trustee in bankruptcy. It had been held in a long series of authorities summed up in *Cohen* v. *Mitchell* (25 Q. B. D. 262, 267) that so long as the trustee did not intervene the bankrupt had power to deal with all his after-acquired property. The Legislature had plainly recognized the validity and effect of those decisions by section 47 of the Act of 1914. That clearly treated intervention as taking place at a particular point of time; there was nothing to suggest it was a continuing process. It gave a firm foundation for the doctrine of *Cohen* v. *Mitchell*, but in his lordship's view the section was an affirmation of the common law, except in the last few lines. [His lordship having quoted from the judgments of Esher, M.R., and Fry, L.J., in *Cohen* v. *Mitchell*, which, he observed, was a case of the very highest authority, proceeded:] Assuming, as he did, that there was here a good intervention, this property could no longer be received or dealt with by the bankrupt. The truer and safer view was that expressed by several judges, viz., that the right to deal with the property before intervention ceased absolutely upon intervention. The property vested absolutely in the trustee, and the bankrupt had no power thenceforth to deal with it. If that was so, what possible authority was there for saying that the trustee could withdraw his intervention so as to divest the property from the trustee and re-vest it in the bankrupt? There was not a vestige of authority, except possibly a *dictum* of Kennedy, L.J., in *Affleck* v. *Hammond* (1912, 3 K. B. 162, 173). That, however, was a case of personal earnings, probably not more than was necessary to maintain the bankrupt, and the trustee there said that he had no title to deal with such earnings, and that he could properly say that his intervention had been made by mistake. It was clear that in such a case the intervention could be disregarded, as the property never passed to the trustee at all. With respect to the learned Judge, his decision could not stand. He had overlooked the fact that the property was indefensibly vested in the trustee by his intervention, and that no withdrawal could ever re-vest the property in the bankrupt. The appeal must be allowed.

WARRINGTON, L.J., and LAWRENCE, J., delivered judgment to the same effect, and an order was made staying all proceedings in the action until the trustee should be made a party.—COUNSEL, *Clayton*, K.C., and

T. E. Haydon; Maugham, K.C., and *T. K. Crossfield*. SOLICITORS, *Redpath, Marshall, & Holdsworth*, for *R. F. Payne*, Sheffield; *Aldous & Co.*, for *Richardson & Mitchell*, Sheffield.

[Reported by H. LINGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

BRITISH ASSOCIATION OF GLASS BOTTLE MANUFACTURERS (LIM.) AND OTHERS *v.* FORSTER & SONS (LIM.) AND OTHERS. Sargant, J. 16th January.

PATENTS—PATENTS, DESIGNS AND TRADE-MARKS (TEMPORARY RULES) ACT, 1914—MEANING OF "PERSONS ENTITLED TO THE BENEFIT OF" IN ACT—POWERS OF BOARD OF TRADE.

Where complicated international agreements as to patent rights in certain glass bottle patents had not been quite fully carried into effect by reason of the war, an unsuccessful attempt was made by the plaintiffs in this action to have an order of the Board of Trade conferring certain rights on certain individuals, made in pursuance of Patent Emergency Legislation, declared null and void.

The facts and arguments in this case were gone into at great length at the end of last term, and the facts were of such supreme importance to the bottle-makers trade that judgment was reserved till this term. The facts and arguments are summarized in the judgment.

SARGANT, J., in his judgment, said: The questions in issue arise out of arrangements made in and after 1907 for the commercial development or exploitation, in various European and other countries, including Great Britain, of certain valuable American inventions for the manufacture of glass bottles which are known as the "Owens Inventions" or the "Owens Patents." It was thought essential, in view of the efficiency of the patents, not merely to provide for the supply and distribution of the machines made under them, but also to arrange for limitations on their number and output. Speaking roughly, the method adopted was as follows:—There was formed in Germany, and under German law, a sort of international or central association called the Europäische Verband der Flaschenfabriken (hereinafter referred to as the "Verband") with a capital of 1,000,000 marks, which was subscribed and taken up in shares roughly proportionate to the relative national output of glass bottles by six national associations of glass bottle manufacturers in each of the six nations or States of Germany, Great Britain, Austria-Hungary, Denmark, Sweden, and Holland. The Verband then agreed to purchase the Owens inventions and patents over a territory referred to as "the German contract territory," which included the whole of Europe and much more, at a price of 12,000,000 marks, of which 3,000,000 marks was payable on 1st March, 1908, and the remainder was payable in nine equal annual instalments of 1,000,000 marks each on 1st March in each succeeding year down to and including 1st March, 1917, on which day the final payment was to be made. This purchase was made from the defendants, the Owens European Bottle Machine Co., of Toledo (hereinafter called the "Owens Company"), an American company, who were the then owners of or had power to dispose of the Owens inventions and patents within the German contract territory. Arrangements were made for securing the payment of the unpaid purchase money for the time being, and the protection of the relative rights of the Verband and the Owens Co. pending the complete performance of the contract of purchase, by vesting the patents securing the inventions within the German contract territory in another German company, the defendants, the Treuband-Vereinigung-Aktiengesellschaft (hereinafter called "the Treuband"), on trusts whereunder, on the due completion of the purchase, they were to be assigned to the Verband, but in case of default they were to be reassigned to the Owens Co. The Verband then entered into six separate agreements to substantially the same effect with each of the national associations above referred to, although only one of these agreements—namely, that between the Verband and the British Association of Glass Bottle Manufacturers (Limited) (hereinafter called the "British Asociation")—has been put in evidence before me. That agreement was dated 16th November, 1907, but was in fact made in anticipation of and so as to derive effect from the agreement dated a few days later between them by which the Verband contracted with the Owens Company; and its principal provisions for the present purposes are as follows:—By Clause 1 the Verband covenanted: (a) To deliver Owens machines to each member of the British Association, and, subject to the conditions thereof, to permit during the continuance of the Owens patents the production of bottles in Great Britain and Ireland by means of such machines and the sale of bottles produced by such means to all countries coming under the said agreement (that is, all countries for which the Verband had the patent rights); (b) not to confer any of the rights mentioned in sub-head (a) on any manufacturer of bottles who was not a member of the British Association; (c) to protect any member of the British Association against any claim of any third party in exercising any right under sub-head (a); (d) to protect by all means the Owens patents at the cost of the Verband; and (e) to take all such steps and make all such payments as should be required for the maintenance of the patents. By Clause 2 the British Association covenanted with the Verband for a limitation of the aggregate production by members of the Association, and the Verband covenanted for a limitation on the aggregate production of the members of each individual partner of the Verband (that is, of each of the five other national associations). By Clause 5 the British Association were not to authorize any of its members to procure the erection of machines constructed in accordance with the Owens patents, and such members, so far as they were entitled to procure such machines, had to order them from the Verband. Clause 6 restricted the rights of members of the British Association in respect of the disposal and use of the Owens machines. A transfer of a machine to a non-member put an end to the right to use it. And there were further restrictions in respect of the supply of the machines. It is common ground that since these agreements the Verband have completed the purchase of the patents sold to them in accordance with their obligations; but I assume that the Verband have still to pay the last instalment of 1,000,000 marks, and that until payment has been made the Owens Company have some interest in the patents sold, which they could enforce through the instrumentality of the Treuband, though, in view of the probability of the payment of the final instalment, the interest of the Owens Company, and the Treuband on their behalf, in the patents sold is a very shadowy one. The supply of Owens machines to the British Association has probably amounted to a comparatively small part of the machines to be ultimately supplied. I have had in evidence the licence granted by the British Association to Cannington Shaw & Co., Ltd. (hereinafter called "Canningtons") as being a specimen of the licences granted or to be granted to members of the British Association. This document is dated 6th February, 1914, just six months before the war, and its contents carry out the arrangements contracted for in the agreement of 16th November, 1907. The royalty payable by Canningtons to the British Association is at the rate of 3d. per gross of bottles, being a rather higher rate than that reserved by the agreement of 16th November, 1907. That was the position of the parties at the outbreak of the war. Since then it has been impossible, of course, for the Verband to continue to supply the British Association and their members with Owens machines, or for the other obligations of the agreement of 16th November, 1907, to be carried out between them, with the possible exception of the import of six Owens machines by the British Association from the United States, under the sanction of the Board of Trade. The immediate occasion of this litigation was the making of an order and the granting of a licence by the Board of Trade, under section 1 of the Patents, Designs, and Trade-Marks (Temporary Rules) Act, 1914, as amended by section 1 of the Patents, Designs, and Trade-Marks Temporary Rules (Amendment) Act, 1914. The Board of Trade, purporting to act under these powers, have made an order, dated 19th May, 1915, and granted a licence, dated 27th May, 1915. By the order the Board in effect suspended the Owens patents (the English letters patent) in favour of Forsters and persons notified to and approved by the Board of Trade as manufacturing for Forsters, but subject to the licence therein mentioned being executed, and subject also to a power to the Board to revoke the suspension so far as regarded the persons so notified to and approved of by the Board. And, by the licence, the Board granted to Forsters liberty to make and use the inventions described in the Owens patents during the period, not exceeding the unexpired residues of the terms of the respective patents, during which the suspension order should be in force, and on the terms as to payment, &c., in the licence mentioned. Thereupon the British Association and Canningtons, as representing their licensees, have brought this action against Forsters, the Owens Company, the Treuband, and the Verband for a declaration that the order and the licence of the Board of Trade are void, and for an injunction to restrain Forsters from acting under the order and licence. No question is raised whether the Board have exercised that power properly. The ground of the plaintiffs' case is that the Board had no jurisdiction to make the order or grant the licence; and this want of jurisdiction is said to be due to the fact that, although the Treuband and the Verband were undoubtedly subjects of a State at war with his Majesty, neither can be held to be exclusively entitled to the benefit of the Owens patents within the meaning of the legislation. First, it is said that the Owens Company, as partially unpaid vendors, have, through the Treuband, an interest in the English patents sufficient to prevent the application of the legislation; and next it is said that, as between themselves and the Verband and Treuband, the plaintiffs are substantially the owners of the patents in this country, or have themselves a sufficient interest therein to exclude the statute. Forsters, the only defendants who need be considered, all the other defendants being friendly to the plaintiffs or neutral, allege that the Treuband and the Verband through it are substantially the persons entitled to the benefit of the Owens patents, particularly having regard to the position produced by the war, and that this is sufficient to bring the case within the Emergency Legislation, and they say that the plaintiffs have no right to sue in respect of the matters in issue, and, in any case, are not entitled to any such declaration as claimed. In my judgment Forsters are right in both these contentions. As to the second and more technical defence, it is well settled law that a mere licensee, even an exclusive licensee, of a patent, cannot sue for infringement unless the terms of his licence amount to a grant of the patent, a case which is really no exception, since then the plaintiff, though called a licensee, is, in fact, an assignee: *Heap* v. *Hartley* (6 R. P. C. 495), *Diamond Coal Cutter Co.* v. *Mining Appliances Co.* (32 R. P. C. 569). But here, not only are the plaintiffs not the exclusive licensees or the assignees, but the agreement with the Verband expressly provides that the Verband are to maintain and protect the patents in this country and sue for infringements, a provision which excludes the idea that the plaintiffs should be entitled to sue. And the plaintiffs are not entitled to an injunction against Forsters. This being

so, the general principles indicated in *Guaranty Trust Company of New York* v. *Hanney & Co.* (1915, 2 K. B. 536), apply, and, though the Court may have jurisdiction to grant a declaration, it ought not to exercise it. Indeed, to grant a declaration here would obviously result in enemy corporations (the Verband and the Treuband) being enabled by a side-wind, and at the suit of friendly subsidiaries, to obtain relief or, at least, an important step towards relief in this Court which it would be impossible for them to obtain directly. It by no means follows that, if Forsters had been threatened by the Verband with an attack to be begun after the war, Forsters might not have been able to sue the Verband and others for a declaration that the order and licence were good—see *Zinc Corporation (Limited)* v. *Hirsch and Others* (32 T. L. R. 7 and 232; 1916, 1 K. B. 541). But that is a wholly different question. The view that I have expressed is fatal to the plaintiffs' claim. But my reasons for thinking that the Board of Trade have not exceeded their special statutory power are as follows:—The plaintiffs are seeking to restrict, in the legislation, the meaning of the phrase "the person entitled to the benefit of which" in section 1 (a) of the Patents, &c., Temporary Rules (Amendment) Act, 1914, to either a single absolute legal and beneficial owner, or to the whole of a number of persons having together an absolute legal and beneficial ownership. That is too limited a construction having regard to the object of the Act, and to the fact that the powers in question are given to an important State Department with a very large discretion as to avoiding or suspending, either wholly or partially, and as to making fresh grants on any conditions. This legislation must be broadly construed; and I think that what has to be considered is: Who is the person or corporation substantially entitled to the benefit of the patent or licence, as the case may be? When the person so substantially entitled is a foreign enemy, the jurisdiction of the Board at once arises. Here, as between the Verband and the Owens Company, the Verband are substantially entitled to the benefit of the patent. There is still the question whether the plaintiffs, or either of them, have any right in the Owens patents as to prevent the Verband and the Treuband, or either of them, from being substantially the persons entitled to the benefit of the patents. Just before the war the plaintiffs had two sets of rights, the one set of the nature of executed rights, the other of the nature of executory rights. So far as they had purchased and had had delivered to them Owens machines, the contract had obviously been executed, and they were entitled as purchasers of the machines to use them to the full, subject to the continuing obligations of the contract as to restriction of output. But under the terms of the contract of 16th November, 1907, there were existing, just before the war, mutual continuing executory rights and obligations to ensure the following main objects:—(1) The continuance of the supply of machines to the British Association and their nominees; (2) the regulation of the production of glass bottles by the members of the six national associations; (3) the protection of the patent rights through the Verband and the due communication between the several parties interested of all improvements in the patented processes; and (4) the due payments of royalties and other sums by the British Association to the Verband. As regards the executed rights given by the actual purchase and delivery of Owens machines, it is clear that the British Association and their nominees were not entitled to the benefit of the Owens patents, and had no rights exceeding a licence to use these particular machines, subject to certain restrictions. Whether these restrictions have or have not been abolished or suspended by the war, such rights are no bar to the exercise by the Board of Trade of their statutory powers, since the legislation clearly separates patents and licences, and allows the revocation of a patent belonging to an alien enemy though an existing licence may be in friendly or neutral hands, or the revocation of a licence belonging to an alien enemy, though the patent may be in friendly or neutral hands. The British Association and their nominees are still entitled to go on using the machines actually delivered to them; and may be, and probably are, placed in an improved position in this respect by the removal of restrictions on the user of the machines. Lastly, to deal with the executory or continuing rights and obligations under the agreement of 16th November, 1907, so far as any interest in or under the Owens patents is concerned, they go no further than arranging for the grant of further licences for further machines, and the limitation and protection of the rights in connection with such licences. Therefore, even before the war, the position of the British Association in respect of these rights was, at the most, no stronger than their position in respect of the machines actually delivered, that is, a right as licensees rather than as patentees. I also think that the effect of the war has been not merely to suspend, but to avoid, the agreement of 16th November, 1907, so far as not carried out. The further performance of that contract would obviously imply continued commercial intercourse of a definite and elaborate character with alien enemies; and in this respect the case is a much stronger one than that of the *Zinc Corporation* v. *Hirsch* (*supra*), and at least as strong as that of *Distington, &c., Co.* v. *Possehl & Co.* (1916, 1 K. B. 811). In the result, therefore, the present position of the British Association and their nominees, as regards these patent rights, is no better than that of persons who have purchased and are licensed to use the particular machines which have been delivered to them. The action is dismissed with costs.—COUNSEL, *A. J. Walter*, K.C., *Mark Romer*, K.C., and *James Whitehead*, for the plaintiffs; *Montgomery*, K.C., and *F. G. Enness* (*Douglas Hogg* with them), for the Owens Company; *Colefax*, K.C., and *J. Hunter Gray*, for Forsters Company; *Alan Nesbitt* represented the Treuband Company; *J. F. W. Galbraith* the Europäische Company. SOLICITORS, for the plaintiffs, *Vizards, Oldham, Crowder, & Nash*; for the defendants, the Owens Company, *Jansons, Cobb, Pearson, & Co.*; for the Forsters Company, *Pritchard, Englefield, & Co.*; for the other defendants, *Wadeson & Malleson*.

[Reported by L. M. MAY, Barrister-at-Law.]

CASES OF LAST SITTINGS.

King's Bench Division.

WALKER v. CRABB. Div. Court. 13th December.

NEGLIGENCE—AUCTION SALE—SALE AT OWNER'S PREMISES—INJURY TO PERSONS PRESENT—NEGLIGENCE OF AUCTIONEER—NON-LIABILITY OF OWNER.

The owner of goods, who instructs an auctioneer to hold an auction of them on premises occupied by the owner himself, is not responsible for any negligence by the auctioneer in the conduct of the sale, whereby persons present thereat are injured. The auctioneer is a skilled agent, to whom complete control of the operations at a sale is entrusted, and he is therefore in the position of an independent contractor.

Appeal from the deputy judge (Mr. Alfred H. Lush) of the Southwark County Court. The plaintiff claimed damages for personal injuries from being kicked by a mare belonging to the defendant through the defendant's negligence. The negligence alleged was the use by the defendant, or his servants or agents, of his premises for the purpose of a public auction, and in running horses up and down for showing off their points in a space not wide enough for so doing without danger to the persons attending the auction. The plaintiff was attending the auction for the sale of the defendant's horses held in the defendant's own yard and stables by an auctioneer whom he had instructed to hold the same. The deputy county court judge non-suited the plaintiff, holding that there was no case to go to the jury on the grounds (1) that there was no evidence of anything in the defendant's premises which constituted a trap or other danger unknown to the plaintiff; (2) that there was no evidence that any negligence alleged in the conduct of the sale was due to the defendant or his servants; and he gave judgment for the defendant. The plaintiff appealed.

RIDLEY, J.—In this case the plaintiff has brought his action not against the auctioneer who conducted the sale, but against the occupier of the premises where the sale was held, and the owner of the horses to be sold who gave instructions for the sale. The question is whether

there was any evidence of negligence for which he is responsible. The deputy county court judge held that there was no evidence of negligence, and it seems to me that he was right in so holding. If his premises had been unsuitable there might have been liability on the part of the defendant in accordance with *Norman* v. *Great Western Railway Co.* (1915, 1 K. B. 584). The case against the defendant at the hearing was that he was responsible for the negligence of the auctioneer. Presuming there was negligence on the part of the auctioneer owing to his ordering the horses to be run up and down in a place which was too confined, was the defendant who employed him to conduct the sale responsible for his negligence? It is obviously wrong to suggest that the relation of master and servant exists between the principal and the auctioneer. The principal cannot be responsible for an act done by the auctioneer unless he employed him to do something unlawful in itself, or which could not be done without creating a nuisance. The act in question in this case seems not to be of this nature, but results from the manner in which the auctioneer carried out the act, which was perfectly legal in itself: *Murray* v. *Currie* (1870, L. R. 6 C. P. 24; 19 W. R. 104). This appeal should be dismissed.

ATKIN, J.—I agree. It seems to me that the position of an auctioneer is that he is the agent of the person who employs him for making the sale; but the auctioneer is a skilled agent, to whom complete control of the operations is given by the owner of the goods, and is therefore in the position of an independent contractor. The owner, in my view, retains no control over the actions of the auctioneer, who is not his servant except by special contract. It would be a remarkable position if, under these circumstances, the owner of the goods were responsible for his negligence. This appeal fails.—COUNSEL, *C. T. Williams; Duckworth.* SOLICITORS, *M. Louis Attwood; Hicklin, Washington, & Pasmore.*

[Reported by G. H. KNOTT, Barrister-at-Law.]

Solicitors' Cases.

Solicitor Ordered to be Struck Off the Rolls.

23rd January.—WILLIAM PEARCE, 30, Sherbrooke-road, London, and 210, Euston-road, N.W.

Solicitor Ordered to be Suspended.

23rd January.—STUART FREDERICK BATES, Newcastle-on-Tyne, ordered to be suspended for three years.

New Orders, &c.

War Orders and Proclamations, &c.

The *London Gazette* of 19th January contains the following:—

1. An Order in Council dated 19th January, varying the Statutory List under the Trading with the Enemy (Extension of Powers) Act, 1915. Additions are made as follows:—Argentina and Uruguay (11); Bolivia (3); Brazil (11); Chile (4); Denmark (37); Ecuador (7); Greece (7); Netherlands (4); Netherland East Indies (18); Norway (4); Peru (2); Spain (29); Sweden (3); Venezuela (5). There are also a number of removals from and additions to the list. The note printed *ante*, p. 184, is appended to the Order. A consolidating list up to 22nd December, 1916, has been published.

2. An Order in Council, dated 11th January, further amending the Proclamation, dated the 10th day of May, 1916, and made under Section 6 of the Customs and Inland Revenue Act, 1879, and Section 1 of the Exportation of Arms Act, 1900, and Section 1 of the Customs (Exportation Prohibition) Act, 1914, whereby the exportation from the United Kingdom of certain articles to certain or all destinations was prohibited. The effect is that sulphate of ammonia is placed in Class A; that is, the exportation is prohibited to all destinations. (See 60 SOLICITORS' JOURNAL, p. 482.)

3. A Foreign Office Notice, dated 19th January, that an addition has been made to the list of persons and bodies of persons to whom articles to be exported to Liberia may be consigned.

4. A Foreign Office Notice, dated 19th January, that additions or corrections have been made to the lists published as a supplement to the *London Gazette* of 11th December, 1916, of persons to whom articles to be exported to China may be consigned.

5. A Notice that Lord Richard Frederick Cavendish, C.M.G., D.L., Mr. John Fowler Leece Brunner, M.P., and Mr. James O'Grady, M.P., have been appointed to be members of the Central Tribunal for Great Britain under the Military Service Acts, 1916.

6. A Notice that appointments have been made to the Appeal Tribunals under the Military Service Acts, 1916, as follows:—County of Lancaster (1); County of Northampton (2); County of Stafford (1).

7. An Order of the Minister of Munitions, dated 19th January (printed below), requiring returns of certain photographic lenses.

8. An Admiralty Notice to Mariners, dated 19th January (No. 84 of the year 1917), cancelling No. 1,251 of 1915, and making a new regulation as to prohibited anchorage in the River Mersey.

Photographic Lenses.

ORDER.

Ministry of Munitions of War.

19th January, 1917.

The Minister of Munitions, in exercise of the powers conferred upon him by the Defence of the Realm (Consolidation) Act, 1914, the Defence of the Realm (Amendment) No. 2 Act, 1915, the Defence of the Realm (Consolidation) Regulations, 1914, the Munitions of War Acts, 1915 and 1916, and all other powers thereunto enabling him, hereby orders that all persons having in their possession or under their control any photographic lens or lenses of the natures specified in the Schedule hereto shall, within seven days from the date hereof, send in to the Director of Optical and Glassware Munitions, 117, Piccadilly, London, W., returns containing the following particulars with regard to such lens or lenses:—

(1) Focal length.
(2) Maximum aperture.
(3) Name of maker.
(4) Designation given by maker.
(5) Number given by maker.
(6) Type of diaphragm.

The SCHEDULE above referred to.

(a) Anastigmatic lenses having focal lengths of from 8 inches to 12 inches inclusive and an aperture of not less than F/4.5.

(b) Anastigmatic lenses having focal lengths of from 18 inches to 24 inches inclusive and an aperture of not less than F/6.

(c) Anastigmatic, symmetrical, and rapid rectilinear lenses having focal lengths of from 22 inches to 26 inches inclusive and an aperture of not less than F/11.

(d) Anastigmatic, symmetrical, and rapid rectilinear lenses having focal lengths of from 30 inches to 72 inches inclusive and an aperture of not less than F/8.

Societies.

The Annual Meeting of the Bar.

The annual general meeting of the Bar was held in the Inner Temple Hall on Thursday, the 18th inst. The Attorney-General (Sir F. E. Smith, K.C.) occupied the chair.

The Chairman, says *The Times*, in opening the proceedings, said the question arose whether it was desirable in the exceptional circumstances caused by the war to have an election of members to form the General Council of the Bar. It was patent to everyone that a very representative vote could not be given on that matter. Some might think that a re-election *en bloc* would tend to stagnation; but inevitable changes led to some modification of the membership of the Council. As far as could be ascertained, the number of barristers who had served or were serving the country on the various battlefields on which British troops were engaged fell little, if at all, short of 1,300. On the whole, he thought, the Compulsory Service Acts had found less material on which to work in their profession than in almost any other. Unfortunately, of those 1,300 there were 122 whom they would never welcome back. The immediate creation of a fund to assist financially any barrister who had joined or was about to join his Majesty's forces had been found unnecessary; but in one case such aid had been given promptly, and should cases of necessity or hardship be discovered those responsible for the well-being of the profession would not hesitate to appeal for the means with which to give help.

In regard to the only controversial portion of the business of the meeting, it was no part of his duty to endeavour to anticipate any discussion which Mr. Holford Knight's motion might provoke; but he might remark that it would be a very bold man who would deny that experience during the war might reasonably be said to have modified many prepossessions and prejudices as to the position of women in this and other communities. Some members might think that those present could not close their eyes to the fact that they were invited to refer the question to the Council at a moment when 1,300 members of their profession, including those who might reasonably be expected to become at some time the leaders of the Bar, were serving the country elsewhere. The question would be borne in mind whether the meeting could with propriety or even decency refer such a matter, with power to decide it, to the Council or a committee at a time when the Council or committee would not possess the authority which those 1,300 members could give to it.

The annual report of the Council having been adopted,

Mr. Holford Knight moved, "That the General Council do consider and report upon the desirability of making provision for the admission of duly qualified women to the profession." He asked that the question should be reconsidered in the light of the further experience which had been gained during the war of the extraordinary capacity shown by women in many spheres of activity. Women were now occupying responsible positions requiring mental qualities, integrity, dignity, and civic responsibility, which certainly would not militate against them in the legal profession. The dominant consideration was whether the change which he advocated would be consistent with public utility. In the situation in which we were likely to find ourselves after the war

the nation would have to mobilize all the intelligence and capacity which it could discover, and in making available all the energy which could be brought to carry on the nation's work regard must be had to capacity and not to sex. That principle, he submitted, would control the natural readjustments in all directions, and the practical consideration was whether that principle could be excluded from operating in the legal profession. In his opinion it could not. He was certain that it was the desire of the profession so to revise its arrangements that they would accord not only with public opinion, but with public requirements, after the war. The motion had been framed so that the Council should be free to adopt a favourable or an unfavourable view when it presented a report on the subject to the general meeting. The resolution did not contemplate, as the Attorney-General had suggested, that the Council should decide the question. The legal profession had attracted the finest intellects in this and every civilized community, and there were in this country women who were fit to join that company and had shewn by their talents and character their fitness to serve the State in the capacity of members of the Bar.

Mr. W. H. Dickinson, M.P., said he felt some confidence in seconding the motion after having heard what the Chairman had said as to the experiences of war time having modified the views and prejudices of those who had opposed the admission of women to various professions. The time was ripe for the consideration of that question. In France, Russia, and Italy women were permitted to practice advocacy. He did not know whether women had the same right in Portugal; but it might be that of the Allied nations Great Britain and Japan were the most backward in regard to this reform. The present was an opportune moment for the serious consideration of the question whether a limited number of women should not be admitted to the profession, because there were exceptional opportunities now to investigate and weigh the peculiar fitness and power which women had for engaging in professional and other work to which, before the war, they had been unaccustomed.

Mr. Menzies claimed to be able to speak for a good many members of the Bar who were serving with the colours, for many of them had been his comrades in the Army, which he entered in the first days of the war, and in which he served until he had the misfortune to be invalided out. He believed it to be the opinion of practically every member of the Bar who was serving in the Army that any proposal of this kind was not a fair and proper one to bring forward at this moment. They had the first claim to say to what extent the old tradition which confined admission to the Bar to the male sex should be maintained. To take such a decision in their absence would be unjust to them, and would be absolutely opposed to the undertaking given by the Government, and approved by the whole of the people of this country, that the restrictive rules of the trade unions which were relaxed during the war should be restored on its conclusion. The profession of the Bar was peculiar, inasmuch as it assisted in carrying on the government of the country, and women could not be admitted to the Bar without making it possible for them to become judges.

Mr. H. T. Sweeney, in supporting the motion, said he supported the right of women to live. He contended that wherever man had the means of gaining a livelihood women should have the same right.

The motion was then put and on a show of hands about twenty-two of the members of the Bar, numbering between 200 and 300, present voted for the motion, and the Chairman declared it to be rejected by an overwhelming majority.

The Union Society of London.

The Society met at the Middle Temple Common Room on Wednesday, 17th January, 1917, at 8 p.m. The subject for debate was: "That the Practice of 'Devilling' at the Bar should be Discontinued." Opener, Mr. Stranger; opposer, Mr. Willson. The motion was carried.

The Society met at the Middle Temple Common Room on Wednesday, 24th January, at eight o'clock. The subject for debate was: "That the Construction of the Channel Tunnel is now an Urgent Necessity." Opener, Mr. Geen; opposer, Mr. Quass. Motion carried.

Grand Juries.

The following correspondence has appeared in the *Times* of the 16th and 25th inst.:—

Sir,—The majority of those qualified to judge are probably now agreed that the intervention of a grand jury, with power to throw out a bill, is no longer necessary for the protection of accused persons. On the other hand, the existence of the grand jury with power to present any person (a power carefully preserved by the Vexatious Indictments Acts) is the only security that the public have against the improper refusal of local Benches to commit for trial. We have been plentifully reminded in these days that we have sometimes removed safeguards with more supposed enlightenment than real foresight, and it is to be doubted whether anyone really thinking the matter out will deny that there ought to be some judicial authority in reserve capable of putting upon his trial a person whom the magistrates have not committed. The grand jury is eminently such an authority as is required for this purpose, being drawn *ad hoc* from the body of the community, unconnected with administration or political officialdom, acting judicially with an authority established during many centuries, and at the same time detached from the actual trial.

Under these circumstances, the necessities of reform would seem to be met by providing that all persons committed for offences triable at quarter sessions, whether actually committed thither or to the assizes, should be tried upon an indictment to be found by the committing magistrates as now by the grand jury, but that offences triable only at assizes should still be presented as heretofore, it still remaining open to the grand jury at assizes to find a true bill on any case, whether triable at quarter sessions or not, where they could now find one. This would at once liberate all the grand jurors now summoned to county quarter sessions and to the innumerable borough quarter sessions throughout the country, it being these grand jurors that mainly complain. On the other hand, it would leave the assize grand jury in full vigour as at present, and it is believed that those grand jurors as a whole do not complain. It would not be advisable to make assize cases triable merely on the committal, and only provide for the summoning a grand jury it specially wanted to investigate an uncommitted case, for that would tend to abolish the grand jury indirectly by desuetude. Moreover, that there are not infrequently cases at assizes which for sundry reasons are better stopped by the grand jury or which require to be put in a different shape from that assumed by the committal is the experience of everyone who has attended those courts.—I am, Sir, your obedient servant,

COMMON LAW.

Sir,—The letter of "Common Law" which appears in *The Times* of 16th January is evidently written by one who has studied the subject, and is, therefore, entitled to full consideration, but I must be allowed to put a colossal query against his first sentence, which is as follows:—

> The majority of those qualified to judge are probably now agreed that the intervention of a grand jury, with power to throw out a bill, is no longer necessary for the protection of accused persons.

Permit me to give some instances. In 1865 Colonel Nelson and Lieutenant Brand, R.N., were ordered by Governor Eyre to hold a Court-martial on one Gordon, who was believed to be one of the leaders of the rebellion in Jamaica. He was found guilty and executed. When these two officers returned to London in 1867 some private prosecutors called "the Jamaica Committee" obtained at the Bow-street Police Court warrants from Sir Thomas Henry to arrest them on a charge of murdering Gordon. They were held to bail and afterwards committed for trial for that offence at the Central Criminal Court, bail being allowed as before. Lord Chief Justice Cockburn charged the grand jury for a whole day, and endeavoured to get the grand jury to find a true bill against them. The grand jury, however, threw out the bill, and so saved these two officers the ignominy of standing in the dock at the Old Bailey on a charge of murder. After the magistrates at Market Drayton had refused to commit Governor Eyre on a charge of murder preferred by the same Jamaica Committee in 1867, they prosecuted him under the Colonial Governors Act for oppression in his office of Governor, and Mr. Vaughan, at the Bow-street Police Court, held him to bail to answer the charge in the Court of Queen's Bench at Westminster. Mr. Justice Blackburn then charged the grand jury, who forthwith threw out the bill. The population of Jamaica was 450,000—the black population was 400,000, the white population 13,000 to 14,000, and the remainder "coloured." The Governor had to act with vigour to prevent the black population from getting the upper hand. I was one of the counsel for the accused in these two cases, and feel strongly that the grand jury did a public service in putting an end to these prosecutions, the accused having acted in good faith in suppressing the rebellion.

I will give some other instances. A man in high position in the Church was committed by a Metropolitan Police magistrate to take his trial at the Old Bailey for an assault on a boy in the park, but the grand jury threw out the bill. A nobleman was committed by a Metropolitan Police magistrate (I forget what the offence was), and again at the Old Bailey the grand jury threw out the bill. Mr. Montagu Sharpe, the learned chairman of the Middlesex Sessions, has stated that the grand jury at that court ignore a considerable number of bills for charges made in the Metropolitan Police district. He has also stated that—

> At a recent meeting of the Society of the Chairmen and Deputy-Chairmen of Quarter Sessions a resolution was passed expressing the opinion that it was undesirable to abolish grand juries.

I could give other instances of the value of the grand jury in stopping prosecutions. I should like to remind you that in January, 1914, you allowed a number of letters to appear dealing with the grand jury system, and there is an able letter from an experienced justice of the peace, Mr. W. B. Forwood, who for years served on the grand jury at the Liverpool and Chester Assizes, who gave instances of their

value. (See *The Times*, 20th January, 1914.) It must also never be forgotten that not even the King, represented by the Government of the day, nor any private prosecutor, can put any man on his trial at the Assizes or Quarter Sessions unless the grand jury representing the country give their consent to this being done.

There is another use for the grand jury, and that is, where magistrates have refused to commit, the Crown or a private prosecutor can present a bill to the grand jury and take their opinion on the subject. See *R.* v. *Hunt and Others* (1 "State Trials," N.S. 175, note *b*), from which it appears that bills were presented by private prosecutors to the grand jury at Lancaster and ignored by them, after what are known as the Peterloo riots (1820), against a constable for perjury, and against the Yeomanry for maliciously cutting and wounding persons when the Yeomanry were engaged in suppressing the riots.

I have, of course, not forgotten that the Royal Commission on Delay in the King's Bench Division recommended in 1913 that the grand jury be discontinued at Assizes and Quarter Sessions. See page 32, section 38, of their second report of 28th November, 1913. Mr. Justice Darling prepared a report for the Commission setting out the arguments for and against grand juries, which unfortunately has not been printed at length.

I have more to say on this subject, but this letter is already too long. What I want, however, to do is, if I may be pardoned the expression, to put the drag on and to prevent the grand jury system from being put an end to because in war time it is inconvenient for some persons to attend on the grand jury. I may say, by the way, that men who do not serve on the grand jury must serve on the petty jury.

—Your obedient servant,
HARRY B. POLAND.

Inner Temple.

Sir Henry Bargrave Deane's Farewell.

As Sir Henry Bargrave Deane does not feel well enough to attend in the Probate, Divorce and Admiralty Division and take public farewell of the practitioners there, he has addressed the following letter to Mr. Butler Aspinall, K.C. :—

"52, Eaton-place, S.W.,
"19th January, 1917.

"My dear Aspinall,—I little thought when I was taken ill in the end of September that it meant my resignation; but I had no option, and it has been a matter of very great distress to me. But I have been very fortunate. I have served under three Presidents, with whom I never had a difference of opinion upon any subject, and to whom I owe a great deal for their kindness. I have had the good fortune also to preside in courts where the Bar were real friends, and always did their utmost to assist me to arrive at sound conclusions, and between whom and myself a strong feeling of affectionate respect has grown up, culminating now in a large number of touching letters of kindness and regret that our daily intercourse as between judge and counsel has come to an end, and I know they are absolutely sincere, and I fully reciprocate their feelings.

"I have never to my knowledge had to complain of the conduct of any member of the Bar in our Division, or to say a word which suggested a complaint, and I have always thought that in the public interest it was manifest how valuable a special Bar for the Probate, Divorce and Admiralty Division has proved to be; but they and I have to part. I could not face them in court to say 'Good-bye,' so am writing to you to ask you, as leader of that Bar, to communicate with them, and thank them all from me for helping me so generously during the past eleven years. I cannot write to them all individually.

"I must also ask you, when occasion occurs, to thank the solicitors and their clerks who principally worked in the Division for their courtesy to me and for the ungrudging assistance they always so ably gave to me. The chamber work to which they chiefly attended would have been far more troublesome but for their unfailing help and kindness, and I am very grateful to them, and a kindly feeling sprang up between them and me which was always a peculiar pleasure to me.

"Now it is all over so far as public duty is concerned, but I hope these friendships and kindly feelings will continue, and when we meet in other capacities I shall always be glad to greet them and feel our past work together is not forgotten. I can say no more—believe me, my heart is very sore. I am daily getting better, but I could not ask for any longer leave from Court, looking at the public interest; but, especially in these terrible times, there are many ways in which I can, I hope, still be of service, and I don't mean to be idle.

"I wish you all what my dear old father said was the best and most complete wish you could express, 'Peace, health and competence.'—Believe me yours affectionately,
"H. BARGRAVE DEANE."

In discharging a receiver and manager who had been appointed on an affidavit of fitness, sworn by a deponent, who described himself as a "director of public companies," Mr. Justice Eve said on Wednesday that affidavits which described persons as directors of public companies or merchants did not, in his opinion, comply with the requirements of the rule (Order 38, Rule 8), and in future he would not act on them.

The Indictments Act, 1915.

At the Central Criminal Court, on Wednesday, says the *Times*, before Mr. Justice Darling, Mary Elizabeth Daniels, 47, nurse, on bail, was indicted, first, for the murder of a married woman named Sturley; secondly, for the manslaughter of the same woman; and, thirdly, for using means to procure the woman's miscarriage. The defendant pleaded "Not Guilty." Mr. Stephen Lynch defended.

During the trial Mr. Bodkin (for the prosecution) tendered the statement made by the woman at the hospital in evidence as a dying declaration; but its reception was opposed by Mr. Lynch.

Mr. Justice Darling, after referring to the circumstances, pointed out that the statement was made by the woman after she had been told by the doctor that she was dying. He held that it was admissible as a dying declaration.

After evidence had been given, Mr. Justice Darling withdrew the third charge, that of using means to procure the woman's miscarriage, because, he said, except the dying declaration, there was no evidence at all implicating the defendant. It had been held that on an indictment for feloniously using an instrument with intent to procure miscarriage a dying declaration was inadmissible. At the time of that decision the charge was necessarily in a separate indictment, and should have been a separate indictment now. All the trouble in the present case was because a recent statute allowed the third charge to be brought into the indictment together with those of murder and manslaughter. He should suggest to those responsible for indictments that this should not be done again, because if this practice were continued it would some day give rise to a grave injustice, which, however, would no doubt be put right by the Court of Criminal Appeal.

The jury acquitted the defendant of murder, but found her guilty of manslaughter. She was sentenced to twelve months' imprisonment.

Lord R. Cecil on our Blockade.

In a statement made to the Agence Radio of Paris, published in the French newspapers of the 20th inst., Lord Robert Cecil, Minister of Blockade, after acknowledging the help which units of the French Fleet were giving the British Navy in the blockade operations, said:—

We have an undoubted right to use our sea power to cut off supplies from the enemy, and we mean to exercise it to the utmost. Neither on grounds of International Law nor of humanity can the enemy, or the world at large, complain of us in this respect. The Germans themselves have tried to cut off all supplies from these islands and it is only lack of the power to do so which prevents them from succeeding. In 1870 they had a similar power so far as Paris was concerned, and they exercised it ruthlessly. Our methods of carrying out our policy are in strict accordance with International Law, and are not disgraced by the outrages committed, in all too many instances, by the naval forces of the enemy.

We claim that the neutral countries adjacent to Germany have not been penalized in so far as their real home requirements are concerned. We are prepared to facilitate, and we do facilitate, their obtaining goods necessary under this head. The Allies, moreover, control many sources of war material and they are entitled to make their own conditions before supplying any countries with goods which they control. They are prepared so to supply them if the neutral countries concerned agree to limit their demands to the amounts they need themselves and not to become bases of supply to the enemy.

When a country is reduced to commandeering all the available domestic supplies of copper, to using substitutes of very dubious value for rubber, and to introducing tickets for food and clothing, can it be said that the blockade is a failure? The ration allowed to each German is supposed to include ½ lb. of meat weekly, a few thimblefuls of butter, and an egg every fortnight, and even this is frequently not forthcoming. Bread is very bad in quality and very scarce in quantity. The potato crop has largely failed, and the hopes which the German people had founded on it have been largely disappointed.

Obituary.

Mr. A. H. Jessel, K.C.

The notices of the late Mr. A. H. JESSEL, K.C., which have appeared in the Press (*ante*, p. 176) duly record his busy, if too brief career, at the Bar and in public life, but give no impression of the personality, at once genial and masterful, which will live in the memory of his many friends in both branches of the legal profession. He had indeed a genius for friendship, and many are they who will miss the sympathy and sagacity which he so readily extended to those who sought his advice in their private affairs. He had strong convictions, and was attached by temperament and conviction to the established order of things. But his sound common sense and clear mental vision made him see things as they are, and he was no blind adherent to conservative

tradition in any of the sides of life in which he interested himself. He is gone, and life is the poorer to those who knew him, whether in Lincoln's Inn or in private life. J. F. W.

Qui ante diem periit,
Sed miles, sed pro patria.

Major Lord Gorell.

Major Lord GORELL, D.S.O., R.F.A., was killed in action on the 16th inst., after a year and ten months' continuous service abroad.

Henry Gorell Barnes was the elder son of the former President of the Probate, Divorce, and Admiralty Division, who was raised to the peerage as Baron Gorell in 1909. He was born on January 21, 1882, and was educated at Winchester, Trinity College, Oxford, and Harvard. He was called to the Bar by the Inner Temple in 1906 and acted as secretary to his father when he was on the Bench, and also to the Royal Commission on Divorce. He succeeded to the title in 1913. He was mentioned in dispatches for his war services, and the award to him of the D.S.O. was gazetted on November 14, the official account stating that "he pushed forward and handled his battery under very heavy fire with the greatest courage and skill. Later he carried out a daring reconnaissance and obtained most valuable information."

Lord Gorell was unmarried and is succeeded by his brother, Captain the Hon. Ronald Gorell Barnes, M.C., Rifle Brigade, who is thirty-two years of age.

"J. M." writes to the *Times* :—

I knew Lord Gorell well, and to know him was to love him. He was endowed with many of the qualities, and among them sagacity, penetration, and thoroughness, which made his father one of the foremost Judges of his generation. But he had also gifts all his own which endeared him to many and which seemed to ensure a career of distinction. In all that he touched—and in his short life that was much—he succeeded, and always with ease. His work as secretary of the Divorce Commission revealed his business capacity, and in the preparation of the memorable Report of the Majority his father was greatly assisted by him. He had already obtained considerable practice at the Bar when, on succeeding to the peerage, he left the legal profession. In the House of Lords his speeches were much commended, and he proved a very effective member of the Parliamentary Committees on which he served. In illustration of his many-sided activity, it may be mentioned that he took a keen interest in Masonry, and that last year he was Junior Grand Warden of England.

Lord Gorell's interest in the Territorial scheme from the outset was great. In March, 1915, he took the battery of which he was in command to the front, and he remained in command of it until his death. His duties as an officer were performed with that thoroughness which marked all that he did.

His many friends will regret that a career rich in promise has been cut short. They will think often of the loss of a bright, simple, and strong spirit, of one who did his duty, whatever it might be, with a certain grace and winning gaiety, with modesty and alacrity. Only a few weeks ago when home on leave for some days—he had been abroad continuously for nearly two years—he spoke of the "mystery" of the struggle in which so many of his friends had fallen, but with calm assurance as to what it was for him to do. Among the many, duty-loving and faithful, whom the insatiable battlefield keeps, none will be more missed than he.

Lord Mersey writes to the *Times* :—

Will you allow me to endorse in a few words the sympathetic note of your correspondent "J. M." on the late Lord Gorell, whose untimely death you record to-day?

I knew him very well. He was my marshal on the Western Circuit about ten years ago, and subsequently, when I became the President of the Court in which his father used to sit, he was my secretary. His life, though short, was full of good work.. He was a man of quite exceptional ability, and was endowed with his father's great power of grasping and dealing with the real point of any matter that came before him. He was, perhaps, too modest in the assertion of his own views, but none will think the worse of him on that account.

I saw him about a month ago, when he was home from the front on a short leave. He was full of energy and hope, and was returning to his duties with a light heart. He was beloved by all who knew him, and he has left behind him a happy memory which will be sanctified by the supreme sacrifice with which he closed his life.

Lieutenant Allan Y. Annand.

Lieutenant ALLAN Y. ANNAND, Highland Light Infantry, killed on 11th January, aged twenty-six, was the youngest son of Mr. R. C. Annand, J.P., of Harton Lea, South Shields, managing director of the Northern Press and Engineering Company (Limited). He was educated at South Shields High School and Merchiston, and, choosing the law as his profession, served articles with Messrs. Hannay and Hannay, of South Shields. He passed the final examination of the Incorporated Law Society in June, 1913, with honours. Shortly afterwards he was appointed to a post in the office of the Official Trustee, and was in charge of a department when, at the outbreak of the war, he joined the Artists Rifles. He was gazetted second lieutenant in the Highland Light Infantry. He went through heavy fighting, was wounded, and for a short time was at the base hospital, but speedily returned to the front, where he took part in the subsequent operations. Mr. Annand's fourth son, Lieutenant-Commander Wallace M. Annand, was killed in Gallipoli in June, 1915, while his third son, Lieutenant James Annand, of the Canadian Highlanders, was gassed in the trenches on the first occasion on which the enemy liberated gas. The second son, a farmer in Australia, joined the Australian Forces.

Legal News.

Changes in Partnerships.

Dissolutions.

WALTER MOLINEUX and JOHN HAROLD SINTON, solicitors (Molineux & Sinton), at 23, Grey-street, Newcastle-upon-Tyne. Jan. 9.
[*Gazette*, Jan. 19.

ERNEST VICTOR LONGSTAFFE, THOMAS COLLINGWOOD FENWICK, FREDERICK GUSTAV LEWIS and VICTOR CHARLES HAMILTON LONGSTAFFE, solicitors (Dod, Longstaffe, Son & Fenwick), 16, Berners-street, Oxford-street. Aug. 29.

FREDERICK WILLIAM POOLE and NICOLAS EDMUND BARNES, solicitors (Poole, Son & Barnes), at Queen-street and Theatre-street, Ulverston, and at Cornwallis-street, Barrow-in-Furness. Dec. 31. The said Frederick William Poole will carry on business on his own account under the style of Poole & Son, as solicitors, at Queen street, Ulverston, and at Cornwallis-street, Barrow-in-Furness, and the said Nicolas Edmund Barnes will carry on business on his own account, and in his own name, as a solicitor, at Theatre-street, Ulverston, and at such other places as at the conclusion of his military duties he may decide.
[*Gazette*, Jan. 23.

Change of Address.

As the Admiralty have requisitioned their house, No. 29, Spring-gardens, during the war, Messrs. BURCH, WHITEHEAD & DAVIDSONS

have taken temporary offices, No. 6, Bolton-street, Piccadilly, W., which is now their address. Their telephone number will be 7072 Mayfair.

Information Required.

WILLIAM MENDEL, Deceased.—Any person aware of the existence of a will of the late WILLIAM MENDEL, of Basildon House, Moorgate-street, E.C., and 31, Hans-mansions, S.W., deceased, formerly of Whittington-avenue, E.C., and 15, Great Stanhope-street, Park-lane, W., or who has witnessed any testamentary document for him, or is able to give any information as to a will, is requested to communicate with Messrs. GERY & BROOKS, solicitors, 10, Old Cavendish-street, Cavendish-square, W.

WALTER FRANCIS FOSTER, Deceased.—Any solicitor or other person holding or aware of the existence of a will of the late WALTER FRANCIS FOSTER, of Arnor Hill, Ruddington, in the county of Nottingham, Esquire, who was killed in France on 17th November, 1916, or who has drawn or witnessed any testamentary document by him, is requested to communicate at once with Messrs. MUMFORD, JOHNSON & Co., solicitors, 5, Bank-street, Bradford.

TO SOLICITORS, BANKERS AND OTHERS.—Anyone having possession or knowledge of any will or testamentary disposition of the late THOMAS HENRY HUNT, of Ravenslea, Whalley-road, Whalley Range, Manchester, surgeon, is requested to communicate with H. DERWENT SIMPSON, solicitor, 16, St. Ann-street, Manchester.

General.

The King has granted, by Letters Patent under the Great Seal, to Sir Henry Bargrave Deane, Knight, late one of the justices of His Majesty's High Court of Justice, an annuity of £3,500.

Mr. Ernest H. Foster, a well-known Leeds solicitor, was found dead on the railway on Wednesday morning at Horsforth, near Leeds. Aged about forty-six, he was a member of the firm of Walter and E. H. Foster, and was prospective Liberal candidate for the Barkston Ash Division.

A Reuter's message from Amsterdam, dated 24th January, says:—The *Vorwärts* publishes an Army Order dated 15th January, according to which non-military subjects of enemy States are forbidden to refuse, without sufficient reason, any work which they may legally be obliged to perform. Foreigners refusing work are threatened with imprisonment up to one year, or a fine up to £75.

For taking smoking materials into a munitions factory five employees were ordered by a North Midland Bench on Wednesday to pay fines ranging from £3 to £10. The prosecuting solicitor asked the magistrates, in view of the recent explosion near London, to send the men to prison, but the Bench refused. The solicitor said fines were useless, as all the workers now clubbed together to pay them.

Mr. Justice Bray, presiding at the Somerset Assizes at Taunton on Monday, commented on the few criminal cases in the Western Circuit, and said he thought the control of the drink traffic had had a substantial effect. He hoped the restriction as to hours would, at all events, be made permanent. The abolition of treating was also useful, but whether it could be made permanent was another matter, as it would be encroaching a little too much on the liberty of the subject. He thought it might also be said that even among criminals there was a sort of idea that they ought to behave themselves during the war.

During the hearing of a case, on the 18th inst., brought under the "Poor Persons" Rules, in the Probate, Divorce and Admiralty Division, Mr. Justice Low made strong comment on the way in which such cases were prepared by solicitors and were presented to the Court. He said that it appeared that these cases were seldom submitted to counsel to advise on evidence. The interests of the parties were often sacrificed owing to the slovenly way in which the cases were got up. The whole system required radical reform, and representations should be made in the proper quarters.

The *Times* correspondent at Paris, under date 19th January, says:—M. Briand to-day met the committee charged with the examination of the Government Bill demanding power to legislate by decree in order to save time. The committee, seeing in this demand a reflection on the work of Parliament, is completely hostile to the Government Bill. M. Briand declared that he was ready to accept any procedure calculated to hasten Parliamentary work, but he submitted a list of some twenty measures which, he declared, ought to be dealt with by decree, chief among them being the suppression of spirits.

At Suffolk Assizes last Saturday, before Mr. Justice Avory, Richard Clarkson Mayhew, sixty, solicitor, of Lowestoft, and his brother, Frederick Gee Mayhew, fifty-six, solicitor, of Saxmundham, pleaded "Guilty" to indictments charging them with misappropriation and fraud. Mr. Poyser, who appeared for the Director of Public Prosecutions, said both men had become bankrupts. In the case of Richard the total deficiency was £42,228, of which £40,000 was money due to clients. In Frederick's case the deficiency was £24,081, of which £20,000 was owing to clients. In one case a lady had lost every penny owing to a misappropriation of £4,446. Mr. Justice Avory sentenced Richard Mayhew to five years' and Frederick to four years' penal servitude.

A Reuter's message from Paris, dated 24th January, says:—M. Baudouin, Chief President of the Court of Cassation, died suddenly while attending a meeting of the National Aid Committee. The body will lie in state at the Court of Cassation. The *Times* adds the following note:—Manuel Achille Baudouin, who was born at Tours in 1846, was one of the most distinguished members of the French Bench. In 1880 he was Advocate-General at Lyons, in 1885 Procurator-General at Limoges, and in 1890 he came to Paris as Advocate-General at the Court of Cassation. In 1893 he was appointed President of the Civil Tribunal in this Court, and later he figured as Procurator-General in the revision of the Dreyfus trial. M. Baudouin had been Chief President of the Court of Cassation for the last four years. He was a Grand Officer of the Legion of Honour.

LONDON COUNTY AND WESTMINSTER BANK (LIMITED).—The balance-sheet of the above bank for 1916 shows a gross profit of £5,040,063 10s. 2d. The dividend for the year amounted to 18 per cent., and the balance carried forward to £182,291 3s.

The Property Mart

Forthcoming Auction Sales.

February 6.—Messrs. FOSTER, of 54, Pall Mall, S.W.: Long Leasehold Interest, 54, Novern-square, S.W., on the premises (see advertisement, back page, this week).

February 13.—Messrs. FOSTER, of 54, Pall Mall, S.W.; Long Leasehold Interest, 15, Palace-road, Streatham-hill, S.W., on the premises (see advertisement, back page, this week).

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	EMERGENCY ROTA.	APPEAL COURT No. 1.	Mr. Justice NEVILLE.	Mr. Justice EVE.
Monday Jan. 29	Mr. Jolly	Mr. Farmer	Mr. Church	Mr. Bloxam
Tuesday 30	Greswell	Synge	Farmer	Jolly
Wednesday .. 31	Bloxam	Church	Goldschmidt	Synge
Thursday Feb. 1	Goldschmidt	Greswell	Leach	Farmer
Friday 2	Leach	Jolly	Borrer	Church
Saturday 3	Borrer	Bloxam	Greswell	Goldschmidt

Date.	Mr. Justice SARGANT.	Mr. Justice ASTBURY.	Mr. Justice YOUNGER.	Mr. Justice PETERSON.
Monday Jan. 29	Mr. Goldschmidt	Mr. Greswell	Mr. Borrer	Mr. Synge
Tuesday 30	Bloxam	Church	Leach	Borrer
Wednesday .. 31	Farmer	Leach	Greswell	Jolly
Thursday Feb. 1	Church	Borrer	Jolly	Bloxam
Friday 2	Greswell	Synge	Bloxam	Goldschmidt
Saturday 3	Leach	Jolly	Synge	Farmer

Creditors' Notices.

Under 22 & 23 Vict. cap. 35.

LAST DAY OF CLAIM.

London Gazette.—TUESDAY, Jan. 16

BARNES, HENRY, Bath Mar 31 Chesterman & Sons, Bath
BRADLEY, JOHN, St Annes on the Sea, Lancs Feb 17 Broughton & Broughton, Accrington
BERESFORD, BRIDGET, Birkenhead, Cheshire Feb 14 Lamb & Co, Birkenhead
BOLTON, MARY, Nelson, Lancs Feb 16 Lawson & Jobling, Burnley
BORG-CARDONA, JOHN GEORGE, Nictheroy, Rio de Janeiro, Brazil, Telegraph Clerk Feb 16 Walker, Manchester
BOYD, JOHN STEWART, Custom House, Essex Feb 26 Harris & Co, Finsbury sq
BRODHURST, BERNARD EDWARD SPENCER, Cloisters, Temple Feb 14 Shipton & Co, Chesterfield
BURT, IDA, Bournemouth Mar 5 Mott & Son Bedford row
CLAYTON, HORACE EVELYN, Oxford Feb 26 Mackrell & Ward, Walbrook
CURZON, Lt Col FITZROY EDMUND PENN, Hyde Park mans Feb 26 Trower & Co, New sq, Lincoln's inn
DENNY, BARRY ST LEGER, Shoreham by Sea Feb 20 Gates & Co, Brighton
DEWSNAP, JOHN, Ashton under Lyne Feb 10 Baguley, Ashton under Lyne
EDWARDS, JOHN, Washford, Somerset, Farmer Jan 31 Joyce & Co, Taunton
EVANS, WILLIAM, Lower Pontnewydd, Mon, Innkeeper Feb 1 Lewis & Son, Newport, Mon
FAITHFULL, ELLEN LOUISA, Pembridge gdns, Notting Hill gate Mar 1 Young, Great Marlborough st
GOOD, FLORENCE ELLEN, Putney Heath Jan 31 Hardwick & Blaber, Brighton
HALL, ELLEN, Brechin pl, South Kensington Feb 28 Church & Co, Bedford row
HARE, WILLIAM, Bolton, Lancs Feb 20 Fullagar & Co, Bolton
HOLMAN, HAROLD, Milson rd, West Kensington Feb 19 Clarke & Co, Queen st
JAMES, GRACE, Colwyn Bay, Denbigh Feb 20 Brookes, Colwyn Bay
JONES, ARTHUR, Edgbaston, Birmingham, Wine Merchant Feb 19 Tarleton & Butlin, Birmingham
KEYWORTH, MARY ANNE, King's Lynn, Norfolk Feb 28 Andrew & Co, Great James st, Bedford row
LAURENCE, Rev RICHARD, Folkestone, Kent, MA Feb 10 Barfield & Child, Plowden bldgs, Temple
MARTIN, ELIZABETH, Leamington Spa, Warwick Mar 2 Campbell & Co, Warwic
MELLY, FLORENCE, Great Malvern, Worcester Feb 14 Romney & Fraser, Great Malvern
MONKMAN, JOHN HENRY, Holgate, York Feb 24 Cobb & Son, York
MOYLE, RICHARD, Birkdale, Lancs, Draper Feb 1 Cooper & Hamer, Bolton
NICOLS, CELESTINE DE, Regent st Mar 7 Hicks & Co, King st, Covent gdn
PERCIVAL, ARTHUR JOSEPH, Lincoln Jan 31 Hasehurst, Lincoln
PHILLIPS, HERBERT DENIS, Olton, Warwick Feb 12 Glaisyer & Co, Birmingham
ROBINSON, ARTHUR, Littleover, Derby Feb 5 Hobson & Marsden, Derby
SHEWARD, JOHN, Birmingham Feb 14 Beale & Co, Birmingham
SMITH, FREDERICK, Bristol Fussell & Co, Bristol
SMITH, JAMES, Accrington, Coal Merchant Mar 2 Fritcliffe & Son, Accrington
STRETTON, GEORGE ALEXANDER, Manor rd, Brockley Mar 12 Griffith & Gardiner, 8 Swithin's ln
TRACEY, LAURA, Exmouth Feb 16 Ridsdale & Son, Gray's inn sq
WILLIAMS, FRANCIS WEARNE, Cardiff Feb 28 Annear, Cardiff